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REPORTS OF

Cases and Proceedings

BEFORE THE

Board of

Railroad Commissioners

OF THE

State of Montana

EX-OFFICIO

Public Service Commission of Montana
Montana Trade Commission
Montana Irrigation Commission

OFFICIAL REPORT

VOLUME 14

1921

INDEPENDENT PUBLISHING CO.
HELENA, MONTANA



385-

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PREFACE.

Report has not been made herein of cases pending before the Board. All unfinished investigations and all matters not concluded on November 30, 1921, have been withheld and will appear in the annual report for 1922, namely, 15 Montana Utilities Reports.

COMMISSIONERS
OF THE
BOARD OF RAILROAD COMMISSIONERS OF THE
STATE OF MONTANA
during the time of these reports

Lee Dennis, Chairman.

Daniel Boyle,	}	Commissioners
Samuel M. Ross,		

Commissioner Boyle's term will expire the first Monday in January, 1923.

Commissioner Dennis' term will expire the first Monday in January, 1925.

Commissioner Ross' term will expire the first Monday in January, 1927.

STAFF

during the time of these reports

EXECUTIVE

Edmond G. Toomey Counsel and Secretary
 R. F. McLaren Assistant Secretary¹
 James H. Bonner Chief Engineer
 Thomas J. Hefling Auditor

RAIL RATES

H. B. Schaefer Rate Expert

RAIL INSPECTORS

V. E. Wilham Safety Appliance Inspector
 M. W. Dore Safety Appliance Inspector²

IRRIGATION

Fred E. Buck Irrigation Engineer
 J. Winter Smith Assistant Irrigation Engineer
 Edward Simpkins Assistant Irrigation Engineer

PUBLIC MILLS

B. T. Stanton Mill Expert
 R. F. Bentzin Mill Examiner³

REPORTER

A. W. Winter Chief Reporter

STENOGRAPHERS

Inez Griswold ⁴	} Two regular appointees. Assigned to different Commissions as required.
Elizabeth W. Winter ⁵	
Hazel McLaughlin ⁶	
May Cotter ⁷	
Margaret L. Young ⁸	

-
1. Appointed on February 2, 1921, to fill vacancy caused by death of W. J. Haynes on January 13, 1921.
 2. Relieved June 7, 1921, on account depressed activity in this department.
 3. Relieved by order May 12, 1921, effective May 15, 1921, on account lack of appropriation for position.
 4. Resigned, effective September 7, 1921.
 5. Resigned, effective March 7, 1921.
 6. Appointed March 7, 1921, to fill vacancy in regular position caused by resignation Elizabeth W. Winter.
 7. Appointed May 19, 1921, pro tempore.
 8. Appointed October 14, 1921, to fill vacancy in regular position caused by resignation Inez Griswold.

Save for exceptions specially noted all members of staff were continued from previous terms by order entered January 3, 1921.

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BOOK I PART I

BOARD *of* RAILROAD COMMISSIONERS

BOARD OF RAILROAD COMMISSIONERS

FORMAL ORDERS

November 30, 1920 to November 30, 1921

IN RE BORAX CROSSING

(Docket No. 751. Supplemental Order No. 298-A).

(Hearing, July 20, 1920. Decided, January 7, 1921).

Underground Crossing—Failure to Agree on Type— Arbitration of Board—Division of Cost

In the matter of the Board of County Commissioners of Mineral County, Montana, against the Northern Pacific Railway Company, Docket No. 751, this Board having received the joint report of petitioner and respondent herein, under date of December 21, 1920, which report is made pursuant to the provisions of Report and Order No. 298 herein, in Re Borax Crossing, 13 M. U. R. 88, and it being recited in said supplemental report of December 21, 1920, that petitioner and respondent are unable to agree as to whether or not a temporary wooden structure or a permanent concrete structure should be installed for underground crossing at Borax, Montana, and it further appearing that both parties join in the request that this Board determine the matter for them, and a full investigation of the matters and things involved having been had, and the Board now being fully advised in the premises;

IT IS THEREFORE ORDERED That the said Northern Pacific Railway Company shall, within a time to be agreed upon between said company and the Board of County Commissioners of Mineral County, Montana, proceed to construct and maintain, and construct and maintain a wooden underpass at or near the station of Borax, in Mineral County, Montana, pursuant to the provisions of Report and Order No. 298 herein.

IT IS FURTHER ORDERED That said structure, which in its nature is temporary in character, shall be replaced by a permanent structure of standard type whenever, in the judgment of the Northern Pacific Railway Company, such permanent structure is necessary.

IT IS FURTHER ORDERED That the Northern Pacific Railway Company and Mineral County, Montana, shall divide the expense both of the temporary wooden structure

and the permanent structure whenever the latter shall be installed in the future, on a basis of 50% to the railway company and 50% to Mineral County, Montana.

IT IS FURTHER ORDERED That the Northern Pacific Railway Company and the County of Mineral, shall, on or before February 1, 1921, report back to this Board as to the time fixed and agreed upon for construction of said temporary structure, and that the same shall be completely constructed and in full operation by the time agreed upon.

JURISDICTION IS HEREBY EXPRESSLY RETAINED for the purpose of making any further or additional Order or direction herein to insure the proper execution of Order No. 298 and this order.

IT IS FURTHER ORDERED That the Secretary of this Board shall serve by mail, certified copy of this Supplemental Order, on each of the parties hereto, and the same shall be in full force and effect forthwith upon said service.

J. HENRY NIBBE, et al.,

v.

NORTHERN PACIFIC RAILWAY COMPANY

(Docket No. 774. Report and Order No. 306).
(Hearing, November 17, 1920. Decided, December 15, 1920).

Industrial Spur—Established Industries.

1. Where applicant for an industrial spur, denied in a former proceeding because there were no shippers, industries or business at the proposed point of intersection of main line and spur, had caused a grain elevator, store and dwellings to be erected thereat subsequent to said former action, held, that these things satisfied the statutory prerequisites of "existing industries" and "established commerce."

Jurisdiction—Agreement of Parties—Arbitration.

2. Parties cannot by any agreement of theirs confer jurisdiction upon this Board. Hence this Board will act as a selected arbitrator upon a controversy submitted on such agreement, there being no statutory authority in the Board to determine same.

Competing Townsites—Advantages to Farmer—Shippers—Safety of Rail Operation.

3. Where two townsites, one naked, and the other scarcely settled upon, both lying adjacent to the main line of a transcontinental carrier, were competing for an industrial spur, that one was selected whereon some industries were started; further, because it was favored by a majority of farmers living in surrounding territory who would haul grain to said spur, and finally, since it was located at a greater distance from an established siding, thereby aiding safer main line operation than a spur set nearer said siding; and notwithstanding that such selected site involved a haul nearly a mile greater than the distance to the rejected site.

National Highway—Grade Crossings—Elimination.

4. Where it appeared from a physical inspection of a right of way for a proposed industrial spur that the same would cross a national highway at least twice, creating two grade crossings, the carrier was directed to construct said spur so as to avoid any grade crossing whatever, even if a grain elevator to be served thereby would be required to install a grain conveyor across the highway in order to load cars.

Application by J. Henry Nibbe and others for an order requiring the Northern Pacific Railway Company to construct and maintain an industrial spur from its main line to the Midland Elevator Company's elevator on Nibbe townsite, Yellowstone County, Montana. Granted.

Appearances: J. Henry Nibbe, for applicants; W. V. Beers, for Rockbridge Townsite; Gunn, Rasch and Hall, by M. S. Gunn, for the Northern Pacific Railway Company; E. G. Toomey, Counsel, for the Board of Railroad Commissioners. Before Commissioners Boyle and Dennis.

By the Board: This is not a new matter. In September, 1919, J. Henry Nibbe commenced proceedings for the construction of a spur track one mile in length along the north side of the right of way of the Northern Pacific railway, commencing at the east end of the present Newton siding in Yellowstone County, Montana. We then concluded that under the jurisdictional limitations prescribed by the governing statutes, Ch. 136, Laws 1909, Ch. 43, Laws 1913 and Ch. 135, Laws 1917, we were without any authority to grant the order sought. *Nibbe v. Northern Pacific Ry. Co.* 13 M. U. R., 20, P. U. R. 1920-B 173. In passing we noted:

"However, if there were no specific limitations, as recited above, on the Commission's authority to compel railroads to construct spurs (referring to the established distance intervals) the general language of the grant of authority to the Commission is not sufficient to meet plaintiff's case. It is 'industrial' or 'commercial' spurs, or 'industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities,' which the Commission may order constructed. The language assumes the existence of some industry or industries and of established commerce which is to be served, and these things more or less concentrated at the terminus of the spur, not at remote farming areas. There is nothing of that kind here. There are no shippers, industries, or business on Nibbe's townsite requiring transportation facilities or service. Whether there ever will be a town thereon, or any industries, or any business originating therefrom is a matter, as yet, resting in the zone of conjecture. To order in a spur for Nibbe's townsite would formulate a precedent whereby every

real estate promoter or townsite owner holding property contiguous to a railroad right-of-way could compel the railroad to lend its agency—a public agency—to the development of a private venture. When Nibbe's townsite contains persons and business, it will be time enough to consider the merits of his application."

Since January 12, 1920, when the foregoing was written, the barren prairie which then offered only a site for a town, has had developed upon it, at the point in question, these buildings: A grain elevator of 20,000 bushels capacity, a structure housing a general merchandise store, and three dwellings, together with some smaller structures. This community is known as Nibbe, and is 6.1 miles from Worden on the west and 4.4 miles from Pompey's Pillar on the east. The Midland Elevator Company, operating the elevator, is in active business having received about 25,000 bushels of grain, of which half has been reloaded and shipped at Newton siding a mile west of Nibbe. Grain receiving and forwarding is constantly going on. The general merchandise store is in full operation, its proprietor having been nominated as postmaster and furnished with a post-office equipment sufficient for five hundred families. The dwellings were erected by a contractor who lives in one of them, apparently in the hope of further development. A lumber yard has been opened, and a hotel and pool hall, blacksmith shop and two additional dwellings are sufficiently assured to mention them here. These things, then, satisfy the statutory necessities we found wholly unsatisfied in January, so far as "existing industries" and "established commerce" are concerned. Nor are these activities transient when examined in the light of the tributary farming area on which Nibbe depends as appears *infra*.

Since the defendant carrier is now willing to waive, qualifiedly, the statutory limitations on our power, imposed for the carrier's benefit, insistence upon which would still preclude relief here, (see the acts cited above) we could end the case in Nibbe's favor without further effort, were it not for the appearance of a competing townsite and town. The carrier's waiver is expressly conditioned on a settlement of these inter-urban differences to the end that its main-line operation be not unduly burdened by industrial spurs appended at mile post intervals. And it was agreed at the hearing by all concerned that this Board should determine whether Nibbe or Rockbridge Townsite afforded the proper location for an industrial spur to serve the country affected, or whether the new town and townsite should both be passed by for the old established town of Pompey's Pillar. Of course, these parties cannot, by any

agreement of theirs, confer upon this Board jurisdiction to determine the merits of controversies between town-site promoters; we have simply lent our offices as selected arbitrators.

The record shows, to summarize the voluminous testimony, the following relevant matters:

There is a steel bridge over the Yellowstone River in Township 3 North, Range 30 East, Yellowstone County, Montana; it is 20 miles up the river to the next nearest bridge and 25 miles below, so that all settlers on fifteen townships are required to use the one crossing. Bridges of this type and span now cost \$150,000, and it is not likely that there will be bridges opposite each town involved for many years to come. After crossing, the settlers are required to turn either east to Pompey's Pillar, four and one-half miles, or west to Worden, seven and one-half miles, to trade; there is one passing track between, Newton Siding, with a spur and sugar beet loading dump and scales belonging to the Great Western Sugar Company. The railroad distances between these points are:

Worden	5.1 Miles	Newton	1 Mile	Nibbe	4.4 Miles	Pompeys Pillar
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Nibbe is the town closest to the bridge, but it has no industrial spur, siding, or other shipping facility.

The normal crop north of the river and tributary to the bridge would be 500,000 bushels of grain; the crop this year will be about 300,000 bushels. Not less than two hundred families are farming on the territory north of the bridge in question. The price paid for hauling grain this year is 1 1-2 cents per bushel per mile; owing to the wretched condition of the road from Pompey's Pillar to a point three miles west, many of the farmers prefer to haul the greater distance to Worden, there being one elevator in each place; Worden has received 30,000 bushels hauled across the bridge this year.

Citizens of Pompey's Pillar, realizing that they cannot continue to enjoy the patronage of the farmers north of the river have become active in laying out a townsite three miles east of Pompey's Pillar and three-quarters of a mile west of Nibbe on the south side of the right-of-way. This townsite is known as "Rockbridge," and the record contains much argument for it. Since it is sponsored by Pompey's Pillar citizens its introduction in this case has served no useful purpose save to exhibit that Pompey's Pillar is conscious of its own inadequacy as a convenient trading point, being barren of any structure save a shack hauled upon it, Rockbridge Townsite must fail for the same reason that Nibbe originally failed.

We know that a determination in favor of Nibbe or Rockbridge townsite must more or less injuriously affect the established community of Pompey's Pillar, where capital to the extent of \$50,000 is invested, but solicitude for these "vested rights" is rendered unnecessary in view of the fact that most of the persons concerned have been expecting and preparing for years to move to a better location nearer the bridge, have even platted Rockbridge Townsite for that purpose. Against their losses, the applicant, Nibbe, promises to offer persons who might come to his townsite from Pompey's Pillar town lots and building locations on terms to be fixed by a board of arbitrators, such terms to induce the move and decrease losses.

The feature of greatest importance in this case is not however, the interests of persons who are established in business or who might establish themselves at one or the other of the new locations of Nibbe or Rockbridge, but the interests of the farmers living north of the bridge who haul their grain for distances up to thirty miles north of the bridge, and who are justified in protesting a further haul after crossing the bridge of from five to seven miles over a road paralleling the main line of the Northern Pacific. That the proponents of the various townsites recognize the justice of the farmers' case is clear from their endeavor so far as Nibbe is concerned, and their willingness so far as Pompey's Pillar and Rockbridge is concerned to locate a town near the bridge for the commercial advantage of the farmers on whom the vitality of any of the townsites in question depends. Bearing in mind the number of these farmers, the volume of their products, their present hauling difficulties and the fact that they furnish the carrier and communities in the area in question with their principal revenues, we must likewise locate the spur near the bridge. And the site we specifically find entitled thereto is the present Nibbe townsite. True, it is some three-quarters of a mile west of the point where the bridge road intersects the Yellowstone Trail parallel to the main line of the carrier and the haul to Nibbe is about that much longer than to Rockbridge, as proposed, but Nibbe is entitled to something for the energy and courage there exhibited in going ahead on the basis of our former order and bringing into being the industries and commercial activities required for an "industrial spur," and this reality must prevail over the possibilities that Rockbridge offers. The consensus, as the record shows, among farmers present was for Nibbe, and this mostly because of the accomplishment there made since January. Moreover, our decision has been influenced by the necessity for providing, as far as possible, safe and uninterrupted main line oper-

ation, a feature the statute requires us to insure. (136, Laws 1909). The carrier should not and cannot be compelled to construct industrial spurs every mile or two between established stations. One spur between Newton and Pompey's Pillar, 5.4 miles distant, will serve the north country in adequate fashion, and is all that can be expected from an operating standpoint. We mention this purposely, to forestall any further applications for industrial spur between the stations named in view of the carrier's willingness to install a spur in a distance interval less than that fixed by statute. It must be understood that our decision can in no sense be taken for a precedent since, in this case, we have ignored the statute because the carrier has been willing. The spur should be constructed at as early a date as possible to eliminate the present costly hauling and the reloading arrangement at Newton.

A physical inspection by a majority of the Board of the site for an industrial spur at Nibbe, of the railroad right-of-way, and of the relation of the Yellowstone Trail thereto, has convinced us of the absolute necessity, not to say desirability, of perfecting for all time an arrangement that will eliminate the hazards attendant on industrial spurs, and of providing facilities which may hereafter be expanded to meet the normal growth of the community. At the present time the Yellowstone Trail, a national highway, runs east and west directly in front of the Midland Elevator. In order to serve the elevator with an industrial spur, it would be necessary for the carrier to cross the Yellowstone Trail with its spur track at least twice, thereby producing two grade crossings a few hundred yards apart. Grade crossings are death traps, and we are constantly aiding and urging their elimination. Consistently, we cannot give our consent to the creation of such a condition, and in order to avoid the hazards resulting therefrom, the petitioners will be required either to move their elevator a few yards on to the carrier's right-of-way, for which ground will be given, or to build a grain conveyor across the Yellowstone Trail to meet the industrial spur which should be so constructed on the carrier's right-of-way, as in no manner to cross the Yellowstone Trail, or physically affect it. To that end the carrier must follow its standard plans and specifications in the construction of the spur on its own right-of-way, and with an eye to expanding business and the introduction of the usual station tracks. Hereafter industries should be built immediately contiguous to the right-of-way to avert any possible interference with the Yellowstone Trail. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held at its office in the Capitol, at Helena, Montana, on the 15th day of December, 1920, in re the application of J. Henry Nibbe, et al., for an order requiring the Northern Pacific Railway Company to construct and maintain an industrial spur tapping the main line of said carrier at or near the site of the Midland Elevator Company's elevator on Nibbe townsite, Yellowstone County, Montana, this matter being before the Board of Railroad Commissioners of the State of Montana upon the petition and complaint of J. Henry Nibbe and others, and having been duly heard and submitted by all the parties interested therein, and a full investigation of the matters and things involved having been had, and the Board having on the date hereof made and filed of record a report containing its findings of fact and conclusions therein, which said report is hereby approved and made a part hereof,

IT IS THEREFORE ORDERED That the application of the said J. Henry Nibbe and others, for an industrial spur, be and the same is hereby granted.

IT IS FURTHER ORDERED That the Northern Pacific Railway Company shall, as soon as reasonably possible, construct and thereafter maintain under the usual terms and conditions, on its own right-of-way, an industrial spur tapping its main line of railway at or near the site of the Midland Elevator Company's elevator on Nibbe Townsite, Yellowstone County, Montana, so as fully and adequately to serve the loading of grain from said elevator, provided, however, that said spur shall be so constructed as to avoid crossing the Yellowstone Trail or near Nibbe Townsite, and that the elevator shall be so located, or such devices installed as will prevent any necessity for said crossing of the Yellowstone Trail.

IT IS FURTHER ORDERED That said company shall report back to this Board, within ten days from service of this order, the time within which said spur will be constructed in accordance with this order, and jurisdiction of this matter and every incident thereof is hereby expressly retained for the purpose of insuring the accomplishment or the end and proper execution of said order.

IT IS FURTHER ORDERED That the Secretary of the Board shall forthwith serve, by mail, a true copy of this Report and Order upon each of the parties hereto and that said order shall be in full force and effect forthwith.

IN THE MATTER OF PETITION TO REQUIRE THE
GREAT NORTHERN RAILWAY COMPANY TO
STOP PASSENGER TRAINS 3 and 4 AT
NASHUA.

(Docket No. 775. Report and Order No. 310)
(Hearing, January 12, 1921. Decided Feb. 3, 1921)

Train Service—Through Interstate Trains—Flag Stops.

Where three passenger trains eastbound and three passenger trains westbound daily, pass through a town of 700 population, serving a contiguous territory embracing 1400 persons, but only two of said trains stop thereat, making it impossible for travelers to arrive in and depart from said town, or leave, and return to said town from nearby towns, particularly the county seat, on the same day, the carrier was ordered to stop, on flag, two through interstate trains, one westbound and one eastbound, to serve incoming and outgoing passengers.

Appearances: P. O. Edman, for the Petitioners; A. E. Knights, Division Superintendent, and L. B. Woods, A. G. F. & P. A., for the railway company; E. G. Toomey, Counsel, for the Board. Before Commissioners Boyle and Ross:

Nashua is situated on the main line of the Great Northern Railway thirty-five miles west of Wolf Point and fourteen miles east of Glasgow; the latter being the county seat.

The substance of this complaint is that passengers are unable to go to Glasgow, transact any business, and return same day, under the present passenger train schedule and that passengers on through trains destined to Nashua must either go beyond or stop short of their destination and take the local train from there. Relief is sought.

Nashua is a town of approximately 700 population, but is, apparently, the railway point for as many more, or a total of about 1400 being served by that station. The testimony shows that something like 2500 cans of cream were shipped during the past season, mostly, if not all, to Williston, N. D.

The train service complained of will, perhaps, be made more clear by the following table, as shown in Great Northern Railway Company's Time Card No. 2; trains 223 and 224 being the only ones scheduled to stop at Nashua.

WEST-BOUND				EAST-BOUND				
3	223	1	27		2	224	28	4
7:30 P.	11:05 A.	8:00 A.	1:35 A.	Wolf Point	7:55 A.	2:30 P.	3:35 P.	9:55 P.
8:25 P.	12:09 P.	8:59 A.	2:21 A.	Nashua	6:58 A.	1:23 P.	2:30 P.	8:57 P.
8:53 P.	12:34 P.	9:25 A.	2:42 A.	Glasgow	6:35 A.	12:29 P.	2:05 P.	8:27 P.

From the above it will be seen that passengers leaving Nashua on train No. 223 at 12:09 P. M. arrive at Glasgow 12:34 P. M., and must remain there until 12:29 P. M. the following day for train No. 224 eastbound. Like-

wise passengers from Glasgow arriving at Nashua 1:23 P. M., must remain until 12:09 P. M. next day for train No. 223 west-bound.

As to shipments of cream for Williston, it does not seem as though there would be much, if any advantage in having train No. 4 pick up this express matter. Train No. 224 (local) is due at Nashua 1:23 P. M. and arrives at Williston 6:35 P. M., while No. 4 is due at Nashua 8:57 P. M., arriving Williston 1:10 A. M. a bad hour, and the cream would, in any event, be on hand at Williston until probably 7 or 8 A. M. It is true that trains 223 and 224 are daily **except Sunday**, but it appears to have been the practice heretofore, when there was cream for the east on Sunday, to have train No. 28 pick it up; furthermore, the railway company is willing to continue this practice in cases of necessity—Sunday afternoon.

It is not apparent to the Board that train No. 3 should stop at Nashua for passengers destined to Glasgow, inasmuch as by so doing it would still be obligatory for such passengers to remain in Glasgow over night. The Commission is, however, of the opinion that Nashua and the section tributary thereto is entitled to such relief as may consistently be afforded, and having considered the testimony in this case as well as the conditions governing in such matters, and the complaint having been duly and regularly heard in the manner prescribed by the Board's Rules of Practice,

ORDER.

IT IS ORDERED That the Great Northern Railway Company shall, commencing five days after receipt of this order, stop train No. 3 on flag at Nashua for passengers destined to points west of Glasgow, and shall stop train No. 4 on flag at Nashua for passengers destined to Poplar or east thereof; or to let off passengers from Glasgow, or points west.

IT IS FURTHER ORDERED That the Secretary is directed to serve a true and certified copy of this Report and Order on the parties hereto, obtaining acknowledgment thereof, and the same shall remain in force and effect until the further order of the Board.

IN RE MONDAK PASSENGER TRAIN SERVICE.

(Docket No. 777. Report and Order No. 311)

(Hearing January 11, 1921. Decided February 3, 1921)

Train Service—Through Interstate Trains—Flag Stops—County Seats Change—Contiguous Territory.

Defendant carrier discontinued stopping through interstate trains at a town after the county government was removed therefrom. Where it appeared, however, that the town was but 2.7 miles east of a junction point serving an extensive agricultural territory and leading to connections with another rail carrier to the south, which junction point utterly failed to provide reasonable waiting facilities for passengers, whereas passengers might be properly accommodated at the petitioning town, the carrier was ordered to stop, on flag, its interstate trains, one each way, daily, to serve the traffic concerned.

Appearances: A. S. Newcomb for the Plaintiffs; A. E. Knights, Div. Supt., and L. B. Woods, Asst. Genl. Frt. & Pass. Agt., for the Great Northern Railway Company; E. G. Toomey, Counsel, for the Board; Commissioners Boyle and Ross. Hearing was regularly held at Mondak, Montana, January 11, 1921, commencing at one o'clock P. M.

By the Board: It is alleged in the complaint filed in this proceeding that Mondak and contiguous territory have been denied what might be termed reasonable passenger train service since the defendant railway company, on or about November 16, 1920, discontinued stopping passenger trains No. 3 and No. 4 at that station, which action was taken when the county seat was moved from Mondak to Popular. For relief it is prayed that Trains 3 and 4 be required to stop as prior to November 16, last.

For its answer the railway company submits that there is no necessity for stopping these trains, since the county seat was changed; that to do so would impose a hardship upon through trains and interfere with interstate commerce; that the present passenger train service is reasonable; and that any further service would constitute an undue discrimination in favor of Mondak.

Mondak is located on the main line of the Great Northern Railway, 23 miles west of Williston, North Dakota, and 2.7 miles east of Snowden, Montana, the latter being the junction point with the Sidney branch of defendant company, which branch furnishes transportation facilities for an extensive agricultural district south of the Missouri River and connects with the Northern Pacific railway at Sidney for Glendive and all points east and west of Glendive on the Northern Pacific main line.

The facts in this case appear from the record to present not so much a question of taking care of any great volume of travel to or from Mondak direct, but the matter of relieving the general situation west and south, by providing means of making connections with through trains, eliminating waiting as much as possible, and to

arrange so that passengers who must wait may do so with some degree of comfort.

Considering first, travel west bound: Train No. 3 is due at Mondak at 5:00 o'clock, at Snowden, 5:10, and at Bainville, 5:35 P. M. The Sidney branch line train No. 377 (mixed daily except Sunday) leaves Snowden at 8:25 A. M. Thus it will be seen that passengers on Train No. 3, destined to points south of Snowden, must remain at Snowden from 5:10 P. M. until 8:25 the next morning, or else get off No. 3 at Williston and take Train No. 223 out of there at 6:30 A. M., arriving at Snowden 7:30 A. M. It is out of the question even to suggest that passengers stay over night at Snowden, as there are no accommodations there of any kind, even for a meal.

Looking at the situation from an east-bound standpoint we find that passengers on Train No. 4, going to points south of Snowden, either by rail or by automobile from the Missouri River, as hereinafter explained, must go through to Williston, arriving there at 1:10 A. M. and take local train No. 223 back to Mondak or Snowden, leaving Williston at 6:30 A. M., in order to catch the south-bound train out of Snowden at 8:25 A. M. Train No. 4 is due at Mondak at 12:24 A. M., and if scheduled to stop there, passengers from the west could get a night's sleep and leave on west-bound train No. 223 at 7:22 A. M., arriving at Snowden at 7:30 A. M. Under the present schedule however, Train No. 4 does not stop at Mondak; hence this petition—in part.

Another feature of this complaint brought out in the testimony is the distance from the railroad to the Missouri River at Mondak as compared with Snowden. It would seem that not a few passengers going to rural points south are met at the river (on the South side) by friends with their automobiles. At Snowden the distance is two miles or more, which passengers must walk, while at Mondak the river is only a block or two away, and, of course, nobody cares to walk a couple of miles carrying one or more suit cases, if it can be avoided.

Taking into consideration all of the circumstances presented, it is quite apparent that the relief herein sought should be granted and can be afforded without imposing any hardship upon the carrier, and the complaint having been duly and regularly heard and submitted and the Board having made its report of findings and conclusions thereon, as herein set forth, an order will be entered accordingly.

ORDER.

At a session of the Board of Railroad Commissioners held in its offices at Helena, Montana, February 3, 1921, in

the matter of the petition presented by the residents of Mondak, Montana, and vicinity, to require the Great Northern Railway Company to improve its passenger train service at that station,

IT IS ORDERED That the said Great Northern Railway Company shall, commencing five days after receipt of this order, cause Train No. 3 to stop on flag at Mondak, Montana;

1st. To receive passengers for points west where said Train No. 3 is scheduled to stop.

2nd. To discharge passengers from Williston or east thereof. And it shall likewise cause Train No. 4 to stop at Mondak, Montana, on flag:

1st. To receive passengers for Williston or east thereof.

2nd. To discharge passengers from Popular and points west thereof.

IT IS FURTHER ORDERED That the Secretary of the Board shall forthwith serve, by mail, a copy of this Report and Order upon the parties hereto, and said order shall become effective within five days after the receipt thereof and shall so remain in effect until the further order of this Board.

BOARD OF COUNTY COMMISSIONERS OF
GALLATIN COUNTY,
MONTANA

v.

CHICAGO, MILWAUKEE & ST. PAUL
RAILWAY COMPANY.

(Docket No. 767. Report and Order No. 313)
(Hearing waived. Decided March 8th 1921).

Signal Devices—Grade Crossings—Chapter 151, Laws 1919—Public Safety.

1. Defendant carrier ordered to install an automatic electric signal device at a point where its tracks intersect a public highway in an unincorporated community, it appearing that buildings located along the tracks and to the right and left of said highway obstruct the view of approaching trains, and that there is fairly heavy vehicle and pedestrian traffic across said tracks, among others, country children attending village school.

Chapter 1, Laws 1919—Waiver of Hearing—Effect.

2. While the carrier may waive a hearing under Chapter 151, Laws 1919, relating to safety devices at rail crossings, such waiver does not mean that this Board must order the installation of said devices as a matter of course.

Petition for an order requiring installation of crossing signals; granted.

Appearances: Wm. H. Buttleman, for petitioner; E. H. Barrett, for the carrier; E. G. Toomey, Counsel, for the Board.

By the Board: Chapter 151, Laws 1919, provides in part as follows:

"Section 1. That authority is hereby given to the Board of Railroad Commissioners of the State of Montana, upon petition in writing made to it by any Board of County Commissioners of the State of Montana, to order railroad companies to install and maintain an electrically operated bell or other signaling device at all points in the State of Montana, where the main lines, spurs or switches of any railroad in continuous operation and use, owned or operated by them, cross any public highway now lawfully established or hereafter laid out within the State of Montana, and where the contour of the country adjacent to said crossing is such that a person approaching same along said highway cannot, at a distance of twenty-five feet of said crossing obtain an unobstructed view of said railroad track for a distance of one-half mile on either side of said crossing, provided, however, all persons driving motor vehicles upon the public highways of this State, outside of incorporate limits of incorporated cities or towns, where the view is obscure or when a moving train is within sight or hearing, shall bring said vehicle to a full stop not less than ten nor more than one hundred feet from where said highway intersects railroad tracks within this State, before crossing the same, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars.

"Section 2. It shall be the duty of the Board of Railroad Commissioners of the State of Montana, upon the presentation of any petition by a Board of County Commissioners, requesting the installation of the signaling device provided for in this Act, to hold a hearing if same be demanded by the railway company, or companies affected, upon due notice to all interested parties in such manner as the Commission shall direct. Upon said hearing, if a hearing be demanded, or without a hearing if same has not

been demanded, the commission shall make such order as it sees fit, and shall, in its discretion, order or refuse to order the installation of the signaling devices as petitioned for by said Board of County Commissioners."

Section 4 of the Act requires the carrier to install the signaling device within three months "after being ordered by the Board of Railroad Commissioners of the State of Montana so to do" and failure to obey the order subjects the carrier to the penalties provided by Section five.

Pursuant to the above provisions the Board of County Commissioners of Gallatin County, Montana, filed with this Board, on October 6, 1920, a petition for an order requiring the above named defendant, and the Northern Pacific Railway Company to install and maintain automatic electric signals at the point where Main Street, in the unincorporated town of Willow Creek, Montana, crosses the tracks of the Chicago, Milwaukee and St. Paul and the Northern Pacific railway companies. On November 6, 1920, the Northern Pacific filed answer agreeing to install an automatic signal device "just as soon as the material can be obtained and the work done."

The Milwaukee, not filing regular answer in due course, has protested from time to time against granting the relief sought, averring in letters that the crossing is not "a dangerous crossing", and expressing the hope that this Board will bear with the company "until financial conditions have improved to the extent that" the company "can consider improvements of this kind". Pressed for a definite answer as to whether hearing was desired in accord with the option granted by Chapter 151, the defendant above responded: "It is not the desire of this company to have a hearing on this matter". However, the waiver of a hearing does not mean that we must order the devices installed as a matter of course. We must exercise a reasonable discretion consistent with the statute here dominant and the law which requires all our regulatory measures to be reasonable within the conception of the 14th Amendment.

Accepting the defendant's invitation to make a physical inspection of the crossing we found that the main line and auxiliary tracks of the Milwaukee and Northern Pacific run parallel, approximately one hundred feet apart, just north of the unincorporated town of Willow Creek and that the northerly extension of the Main Street of said town, a lawfully established public highway running north and south, intersects six tracks, three belonging to each company. Buildings located to the right and left of Main Street, so extended, and both north and south of each group

of tracks, namely, elevators, coal shed, depots, oil house and stock yards furnish permanent obstructions to the vision of pedestrians or vehicle travelers, particularly the nearer they approach the Milwaukee crossing, and in any event twenty-five feet therefrom when cars are placed on the passing and industry tracks to remain from a day to a week or more, an unavoidable practice. Vision is obstructed for a minimum distance of one-half mile east and west of the crossing, as the traveler proceeds north from Willow Creek or south from a point north of the Milwaukee stock yards, in either event from a point within the statutory distance. Freight trains meeting at Willow Creek further impair the view of the traveler.

A check was made by the Northern Pacific to ascertain the travel which passes over its crossing, commencing at twelve noon October 15th, and continued to twelve noon of October 18th. This check was made by keeping men employed thereat continuously for the 72 hours. The tally for the period showed the following:

Two hundred nineteen automobiles; 151 teams; 20 motor cycles; 72 horseback travelers; and 661 pedestrians; total, 1123, an average movement over the Northern Pacific tracks of 374 each 24 hours.

As the town of Willow Creek lies on the south side of the Northern Pacific tracks and the Milwaukee tracks are north of the Northern Pacific tracks, it follows that the travel over the Northern Pacific tracks is greater than over the Milwaukee tracks. However, it is our opinion, from observation and checks, that the major portion of the vehicle and horseback traffic passes over the Milwaukee tracks.

The territory north of Willow Creek is well settled with ranchers whose children attend the school at Willow Creek and who are obliged to cross the Milwaukee tracks. The majority of these minors are small children who do not know the danger in crossing railroad tracks.

The record does not admit of the inference that a compliance with the order herein will seriously affect the company's revenues, or prove the straw which will break the camel's back, or that it is in any sense out of proportion to the benefits following from installation of the safety device. Indeed, the "financial situation" relied upon as an objection is the general one, and we are not advised of specific distress on the part of defendant.

From the whole record we find that the public safety, necessity and convenience require the installation by the defendant of an automatic electric signal device at the point where the main line and auxiliary tracks cross the lawfully established public highway, locally known as an ex-

tension of the Main Street of Willow Creek, in Gallatin County, Montana, and that the same should be installed as soon as possible. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol, at Helena, Montana, on Tuesday, March 8, 1921, present Chairman Dennis and Commissioners Boyle and Ross;

In the matter of the petition of the Board of County Commissioners of Gallatin County, Montana, for an order of this Board requiring the Chicago, Milwaukee and St. Paul Railway Company, to install an automatic electric signal device at the point where its lines cross the northerly extension of the public highway known as the Main Street of Willow Creek, Montana, this matter being before the Board upon the petition of said Board of County Commissioners of Gallatin County, Montana, and defendant company having waived a hearing thereon, and a full investigation of the matters and things involved having been had, and the Board having this day made its report containing its findings of fact and conclusions thereon which said report is hereby approved and made a part hereof, now the Board being fully advised in the premises;

IT IS ORDERED That the Chicago, Milwaukee and St. Paul Railway Company shall, on or before the 18th day of June, 1921, install an automatic electric signal device at the point where its tracks intersect the northerly extension of that public highway locally known as the Main Street of Willow Creek, Gallatin County, Montana, and that said device shall be of a character, and so installed, as fully and completely to protect said crossing.

IT IS FURTHER ORDERED That the Secretary shall immediately serve, by mail, a certified copy of this Report and Order upon each of the parties hereto, and that the same shall be in full force and effect upon receipt thereof by defendant company.

Investigation and Suspension Docket.
IN RE GENERAL DISTANCE SCALE OF RATES BETWEEN ALL POINTS ON GREEN FUEL WOOD.

(February, 1921, Hearing March 12, 1921.)

(Item: I. & S. B-3. Decided, March 12, 1921.)

Green Fuel Wood—Reasonable Rates.

Rates on Fuel wood prescribed by Director General of Railroads, during Federal Control in cents per 100 pounds found unreasonable, a trial demonstrating that millwood and slabwood, domestic fuel of considerable importance in Montana, could not profitably move thereunder. Reasonable rates on green fuel wood, in cents per cord, prescribed for distances up to 400 miles. U. S. R. A. rates on fuel wood restricted to apply on dry fuel wood only.

Inquiry into reasonableness of existing distance schedule of intrastate rates on green fuel wood, per cord and per hundredweight basis of computing rates, car minima Existing distance scale found unreasonable; rates prescribed after agreement between carriers and shippers thereon.

Appearances: J. G. Morrison, J. E. Spurling, W. H. Merriman, for the Northern Pacific Railway Company; P. B. Beidelman, L. B. Woods, for the Great Northern Railway Company; O. P. Kellogg, G. W. Blair, Murphy and Whitlock, by Mr. Whitlock, for the Chicago, Milwaukee and St. Paul Railway Company; W. P. Coughlin, W. C. Lubrecht, for the Anaconda Copper Mining Company; D. E. Swinehart, for the Interstate Lumber Company, (Missoula); E. G. Toomey, Counsel, H. B. Schaefer, Rate Expert, for the Board.

Before: The Board, en banc, in Helena.

By the Board: On March 4, 1919, after the receipt of numerous complaints alleging that unreasonably high rates prohibited the movement of fuel wood from western Montana points of supply to points of consumption in eastern and central Montana, and in particular, fuel wood that might accrue from cut-over timber lands, this Board, acting under the limitations consequent on the plenary exertion of the Federal war power, presented the subject matter of the complaints to the Chairman of the St. Paul District Freight Traffic Committee of the United States Railroad Administration, submitting therewith for consideration, after study by the Board, a tentative distance schedule of rates whereon it seemed fuel wood might freely move. On May 27, 1919, this Board was notified by the Director of the Division of Public Service, U. S. R. R. A., that the application of the St. Paul District Committee for authority to publish a new scale of mileage rates was before the Director General for action and inviting our views on the scale pro-

posed in the committee's application No. 391; the Director of Public Service was forthwith informed by letter that the mileage scale recommended by the Committee was the same as the scale suggested by the Board and urged to early action. On July 2, 1919, this Board was advised by letter that Freight Rate Authority No. 9786 authorized the publication, on ten days' notice, of these rates:

Distance		Rates in Cents per 100 lbs.
25 miles or less	.....	4
Over 25 miles not over 50 miles	.....	5
Over 50 miles not over 75 miles	.....	6
Over 75 miles not over 100 miles	.....	7
Over 100 miles not over 125 miles	.....	7½
Over 125 miles not over 150 miles	.....	8
Over 150 miles not over 175 miles	.....	8½
Over 175 miles not over 200 miles	.....	9
Over 200 miles not over 225 miles	.....	9½
Over 225 miles not over 250 miles	.....	10
Over 250 miles not over 275 miles	.....	10½
Over 275 miles not over 300 miles	.....	11
Over 300 miles not over 325 miles	.....	11½
Over 325 miles not over 350 miles	.....	12
Over 350 miles not over 375 miles	.....	12½
Over 375 miles not over 400 miles	.....	13
Over 400 miles not over 425 miles	.....	13½
Over 425 miles not over 450 miles	.....	14
Over 450 miles not over 475 miles	.....	14½
Over 475 miles not over 500 miles	.....	15
Over 500 miles not over 525 miles	.....	15½
Over 525 miles not over 550 miles	.....	16
Over 550 miles not over 575 miles	.....	16½
Over 575 miles not over 600 miles	.....	17
Over 600 miles not over 625 miles	.....	17½
Over 625 miles not over 650 miles	.....	18
Over 650 miles not over 675 miles	.....	18½
Over 675 miles not over 700 miles	.....	19

(Subject to 25% increase, our Report & Order No. 294, August 10, 1920)

The foregoing scale met the fuel wood situation so far as rates were a factor in the development of a market for fuel wood gleaned from cut-over and burned-over timber lands, essentially a dry, and relatively, a light-weight fuel wood; but it soon became evident from investigation of complaints filed that these rates seriously militated against the shipment of green slabs, "millwood and slabwood". for fuel uses, largely because of the substitution of the per hundred weight scale for the former per cord scale of computation of the carriers' charge. The former method of computation was adopted as a result of misinformation on the weights of dry and green wood, a subject about which much controversy has revolved. The rates, intended for a reduction, and so marked, were in fact an advance over the former slabwood rates. The matter was further emphasized by the desperate fuel shortage in the fall and winter of 1919, when we sought, November 7, 1919, one-half rates on fuel wood between stations in Montana "to apply until normal conditions restored"; the Regional Director declined to extend such authority in line with similar action elsewhere.

Since the beginning of 1920, lumber mill operators and fuel dealers in western Montana have protested the foregoing scale, and prayed for a reinstatement or re-establishment of the former rate on green wood or "slabwood and millwood". An extensive inquiry into the whole subject was commenced in April, 1920, and prosecuted, with interruptions, up to this time, finally culminating in a hearing on the February, 1921, I. & S. Docket, from which this order comes. It is unnecessary now to set forth an analysis of the evidence before this Board at the hearing and that taken prior thereto and submitted to the carriers, as to the effect of the present scale. It is enough to say that it has produced a situation rapidly making for the elimination of the use of slab wood as fuel within Montana, so far as the people of the state are to be served by the product of the great forests within its boundaries, and it has encouraged mill operators to burn slabs at the mills, resulting in a menacing economic waste of fuel material. Seven principal shippers favored rates in cents per cord, while three favored rates in cents per hundred weight, one of the latter, however, looking at the matter from the standpoint of the settler offering dry wood for carriage. The weight of green slabs runs from 3900 to 5000 pounds, averaging, it seems, about 4500 pounds per cord; dry slabs seem fairly constant at about 2000 pounds per cord. Rates in cents per hundred weight are invariably lower on dry wood of which very little moves, and higher on green wood for which there is a strong demand, consumers storing and drying same, from May to September for winter's consumption. While the element of profit is not discarded in the scale of "millwood and slabwood", (the tariff term, comprehending chiefly green slabs) as it is not in most human activities, the record does show that the principal producers thereof rely on their finished product, lumber, for their remuneration, and are actuated in fixing a selling price more from a motive of economic salvage, and aiding our ever present fuel problem, than from concern for reward.

The record contains no denial by the carriers of the operators' assertion that the present rate scale has practically destroyed their market. On the contrary, after examination of the shippers' and operators' witnesses at the hearing, and the informal conference with complainants which I. & S. Docket proceedings afford, the carriers named in the order following agreed to accept the **per cord** scale for "millwood and slabwood" tendered by the Board in settlement of the controversy on February 10, 1921, and which we now find reasonable. This scale is based on the present Eastern Washington-Northern Idaho green wood

scale for distances up to and including 400 miles, and which was constructed after careful study of the problem involved and for conditions practically identical with Montana conditions here presented. It is more favorable than the "old" scale asked for, and while it is higher than fuel wood rates recently prescribed by the Public Service Commission of Oregon (P. S. C. Order No. 690, March 1, 1921) the record will not admit of the wholesale adoption of the Oregon scale, because of utter lack of proof as to the similarity of the elements entering into the Oregon rates with the known elements before us. The restoration of the per cord basis of computing rates, coinciding as it does with the ordinary sale unit in wood commerce, will prove of distinct advantage by eliminating weight disputes between carriers and shippers. The uniform basis of rates in cents per 100 pounds now in effect, will, by the order following, be restricted to apply on dry wood only, thereby continuing the opportunity originally intended to be created by the promulgation of such rates, namely, to assist homesteaders engaged in clearing lands to market fuel wood. The Board will seek uniformity of rates as to carriers not here agreeing, but served with notice herein. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana held in its office in the Capitol at Helena, on Monday, March 12, 1921, commencing at 4:30 o'clock P. M., present Chairman Dennis and Commissioners Boyle and Ross:

In the matter of the I. & S. Item B-3, general distance schedule of rates applying between all points on Green Fuel Wood, this matter being before the Board upon the complaint of various shippers and mill operators, and this proceeding being instituted by the initial motion of this Board, and a full investigation of the matters and things involved having been had, the carriers hereinafter named participating therein at public hearing on this day, and agreeing to the schedule hereinafter set forth, and now this Board being fully advised in the premises,

IT IS ORDERED That the Northern Pacific Railway Company, the Great Northern Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company be, and they are, and each of them is, hereby notified and required to establish not later than April 15, 1921, upon one day's notice to this Board and to the general public, and thereafter to maintain the following general distance schedule of rates on green fuel between all stations in Montana, to-wit:

Miles	Cents per Cord	Miles	Cents per Cord
10.....	125	210.....	344
15.....	156½	220.....	344
20.....	156½	230.....	375
25.....	172	240.....	375
30.....	172	250.....	406½
40.....	187½	260.....	406½
50.....	195½	270.....	437½
60.....	203	280.....	437½
70.....	211½	290.....	469
80.....	219	300.....	469
90.....	227	310.....	500
100.....	234½	320.....	500
110.....	250	340.....	531½
120.....	250	360.....	562½
130.....	265½	380.....	594
140.....	265½	400.....	625
150.....	281½		
160.....	281½		
170.....	297		
180.....	297		
190.....	312½		
200.....	312½		

Minimum Weights

Rule No. Where reference is made in Tariff to this Rule the following will apply:

(a) The minimum load for shipments loaded in Box or Stock Cars will be as follows: (See Exceptions 1 and 2).

Cubical Capacity of Car

When loaded in Box or Stock*
Cars Minimum will be:

1750 feet and under.....	12 cords
Over 1750 feet and not over 1900 feet.....	13 cords
Over 1900 feet and not over 2050 feet.....	14 cords
Over 2050 feet and not over 2200 feet.....	15 cords
Over 2200 feet and not over 2350 feet.....	16 cords
Over 2350 feet and not over 2500 feet.....	17 cords
Over 2500 feet and not over 2700 feet.....	18 cords
Over 2700 feet and not over 2850 feet.....	19 cords
2851 feet and over.....	20 cords

*Stock cars equipped with watering troughs or feed racks which prevent complete use of the interior space will be subject to minimum of one cord less than above provided.

(b) **Open Equipment.** Charges on shipments on flat and coal cars will be based on actual measurement obtained by receiving agent (See Rule No. , governing shipments to and from non-agency stations), subject to the following minima: (See Exception No. 2).

Cars under 36 feet in length.....	14 cords
Cars 36 feet and not over 37 feet in length.....	16 cords
Cars over 37 feet in length.....	18 cords

Exception No. 1. Closed cars loaded to full weight carrying capacity (10 per cent above marked capacity) and containing less than the minima provided above, will be subject to charges based on actual cordage determined as prescribed in Note....., Rule No..... (See Rule No..... for Estimated Weights).

Exception No. 2. Open cars loaded to full loading space or full weight carrying capacity (10 per cent above marked capacity) and containing less than the minima provided above, will be subject to charges based on actual cordage determined as prescribed in Note....., Rule No..... (See Rule No..... for Estimated Weights).

IT IS FURTHER ORDERED That nothing herein contained shall affect the existing rates as they apply to dry fuel wood.

IT IS FURTHER ORDERED That this order shall continue in force until the further order of this Board, and that the secretary shall serve a full, true and correct copy hereof upon each of the parties hereto, and the same shall be in full force and effect forthwith.

LODGE GRASS COMMERCIAL CLUB

v.

CHICAGO, BURLINGTON AND QUINCY
RAILROAD COMPANY.

(Docket No. 781. Report and Order No. 314)
(Hearing March 10, 1921. Decided March 22, 1921)

Carriers—Station Service—Business Hours.

Where it appeared that defendant carrier maintained a station in a town of 300 population, serving contiguous territory embracing not less than 1,500 people, all of whom transacted their rail business from said station, that annual station earnings approximated \$100,000, that four passenger trains daily were scheduled to stop at said station, but that the only regular station employe of said carrier was off duty during the hours when three of the trains arrived, thereby causing great inconvenience to passengers and shippers as well, the carrier was ordered to provide an additional employe so that all trains, save one at 3:27 A. M. might be properly served.

Complaint of insufficient station service at Lodge Grass, Montana. Relief granted.

Appearances: Maddox and Guinn, by William Maddox, for Complainant; Goddard and Clark, by Mr. Clark, for Defendant; E. G. Toomey, Counsel, for the Board. Before: Commissioner Ross.

By the Board: By plaintiff's complaint it is alleged that defendant carrier employs but one man, an agent, at the station of Lodge Grass, Montana, and that three out of the four daily passenger trains serving that station pass through at a time when there is no employe on duty, from which it is concluded, as a matter of law, that the service rendered to the public, is unreasonable. For relief it is prayed that an order be made requiring the defendant to employ an additional station man in order that the depot may be heated, lighted, and open to travelers arriving and departing on night trains, outgoing passengers enabled to purchase tickets, prompt delivery made of perishable or emergency shipments by express; and telegrams forwarded as exigencies require.

Defendant denies the material allegations of the complaint and avers: "that the service rendered at Lodge Grass is in all respects commensurate with the size of the place, and the business transacted there, and particularly at this time when it is required, because of the exigencies of the situation, to curtail its expenses."

The record shows that the only regular station employe of the carrier is an agent whose hours of service are from 8:30 A. M. to 5:30 P. M. daily. The schedule of passenger trains through Lodge Grass is as follows:

WEST-BOUND		EAST-BOUND	
No. 41	No. 43	No. 42	No. 44
5:52 P. M.	3:27 A. M.	9:52 A. M.	9:02 P. M.

All four trains are carded to stop at Lodge Grass, and there is no question of train service involved, but plaintiff directs particular attention by abundant proof to the fact that, with the one exception of train No. 42 due at 9:52 A. M., there is no employe of defendant company on duty when trains are scheduled and as a consequence waiting rooms are cold, frequently not lighted, tickets not on sale, no one to check or look after baggage or express, and in addition to all this, there are no means of ascertaining when or to what extent trains are late; passengers must wait **until trains come** for this information, obviously a denial of information. The inconvenience appears not to be confined to passenger train travel, but to extend to freight movements as well. Testimony of witnesses is to the effect that the agent is a very busy man, so much so that it is the general practice to deliver freight without the freight bills, making out the bills later when the agent can find time, likewise making collection of freight charges two or three times a week. An incidental feature of the present situation appears to be the delay in the morning until 8:30 when the agent goes on duty before delivery can be had of freight for which men and teams from outlying farms and ranches are waiting; these consignees are anxious to make an early start for the country, having come to town the night before, and being ready to leave the first thing in the morning, or as soon as they can receive their shipments.

From the testimony introduced by defendant it seems that the section foreman is detailed to look after the depot at night—attending to the stove, etc., and that he is paid extra for such services. However this may be, it is plain that the depot has been neither heated nor lighted on many occasions, and passengers waiting for trains have been obliged to search for fuel and start a fire, while waiting for a belated train, without any information as to the

probable time when it would arrive. It should be stated, however, that all witnesses agree that the section foreman has at all times been willing and accomodating in the matter of delivering freight, after hours, when requested to do so by some consignee who was anxious to leave during the night of receipt, but it has first been necessary to find the foreman "somewhere around town."

Lodge Grass is situated on the Crow Indian Reservation, about 90 miles south of Billings, Montana. The population of the town proper, is about 300, while the territory tributary thereto supports from 1200 to 1500 persons. That is, between 1500 and 1800 people take passage or transact their railroad business at the station of Lodge Grass. The territory is largely devoted to farming and stock raising, particularly the latter; the community is a growing one, with the usual amount of interest in oil development at this time and in the area where it is situated. Billings is the logical trading center, and the record shows that much perishable merchandise, as well as machinery repair parts is ordered from Billings dealers, and shipped to Lodge Grass by express; thus, train No. 44, arriving at 9:02 P. M., is an important one to the business interests of Lodge Grass, because "hurry up" orders telephoned or wired into Billings can be filled and sent out the same day, thereby avoiding loss of valuable time. Certainly perishable shipments should be taken care of upon arrival.

That the community is a growing one appears substantiated by the reports of station earnings furnished the Board monthly by the carrier; without going into extensive details it will suffice here to note that the earnings of Lodge Grass station were as follows during 1919 and 1920:

	YEAR 1919	YEAR 1920
Freight forwarded	\$51,325.80	\$49,632.37
Freight Received	29,669.26	57,754.37
Passenger revenue	5,983.86	6,274.36
	\$86,978.92	\$113,661.10
Average per month.....	\$7,248.25	\$ 9,471.76

These revenues, without reference to service deficiencies, would seem, in and of themselves, to demand and justify the attention of two regular station employes. Other Montana stations receiving smaller receipts are so equipped.

Recently (the exact date not shown in the record), The Mountain States Telephone and Telegraph Company has been extended to Lodge Grass, one instrument is now in the depot, the other in a store, and these devices furnish means of communication to outside points in case of sickness or emergency; quite as satisfactorily, no doubt, as would night telegraph service. The importance of

sending telegrams at night is not as apparent, therefore, as plaintiff's insistence thereon would indicate, but in other respects, except as to the employe on duty for train No. 43 at 3:27 A. M., we are of the opinion, after careful review of the whole record, that the station service rendered by the carrier at Lodge Grass, Montana, is insufficient, inadequate, and unreasonable, demanding prompt correction, and so find. An order will be entered accordingly.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol, at Helena, Montana, on the 22nd. day of March, 1921, commencing at 10 o'clock A. M., present, Chairman Dennis, Commissioners Boyle and Ross:

In the matter of alleged insufficient station service at Lodge Grass, Montana, Docket No. 781, this case being before the Board upon complaint of the Lodge Grass Commercial Club and answer of defendant carrier, hearing and a full investigation of all matters and things involved having been had, and the Board having this date made its report containing its findings of fact and conclusions thereon, which said report hereto attached and made a part hereof, is hereby approved, now the Board being fully advised in the premises,

IT IS ORDERED That the Chicago, Burlington and Quincy Railroad Company shall, not later than ten days after receipt of this order, so arrange that its regular agent's hours of service at Lodge Grass, Montana, shall commence at 8:00 o'clock A. M., instead of 8:30 A. M., and that said carrier shall also employ some suitable person. (not necessarily a telegraph operator), whose duties shall commence upon the retirement of the agent for the day, and shall continue until such hour as may be designated by the defendant, in any event not terminating before the departure of east-bound train No. 44, due at Lodge Grass at 9:02 P. M. Such person so employed shall have authority and it shall be his duty to sell tickets, handle baggage, receive or make delivery of perishable express or freight shipments, obtain information with respect to the time of arrival of passenger trains when late, post same, and perform such other services as may be necessary for the reasonable accommodation and comfort of the traveling public; and

IT IS FURTHER ORDERED That the Secretary shall serve by mail on each of the parties hereto, a certified copy of this Report and Order, and the same shall become effective as hereinbefore provided, and shall so remain in full force and effect until the further order of this Board.

Investigation and Suspension Docket.
 IN RE RATES ON ROAD BUILDING MATERIAL.
 (March 1921, Hearing April 15, 1921.)
 (Item: I & S B-8. Decided, April 28, 1921.)

Carriers—Rates—Road Building—Materials—Economic Conditions.

1. Where it appeared that there was and would continue to be increased road building, street grading and house building, representing the accumulation of normal efforts deferred by war, that existing rates on sand, gravel, crushed stone and cement retarded necessary movements of such commodities required in the undertakings named, and that such activities afforded the only opportunity for employing labor on a large scale in a jurisdiction where industrial depression was unusually acute, the carriers were ordered to wipe out the 1920 general rate increases on such commodities for the period May 20-November 20, 1921, they not interposing specific proof as to costs of hauling same.

Rates—Cost of Service—Value of Service.

2. Carriers' rates must always take account of the worth of the service and if a whole community is rendered less able to pay for a service because of a succession of economic disasters, it is but fair that the carrier share its part of the misfortune by an attempt to accommodate its rates to popular necessities at least as long as the depression is in full force. While the emphasis of late has been on the "cost of the service," neither courts nor commissions have lost sight of the opposing element, "the value of the service."

Rates—Factors—Road Building Materials.

3. Sand, gravel and crushed rock for road and construction purposes are entitled to low rates, comparatively speaking, because their value is low, risk attending shipment is negligible, volume of traffic large, movable in almost any open top cars, and loading heavy.

Rates—1920 Increases—Policy.

4. Action herein is not to be taken as commencement of a general assault on the present freight rate structure, nor as aught more than recognition of an emergency.

Inquiry into alleged oppressive character of intra state rates on cement, sand, gravel, broken and crushed stone, etc., between all points within the State of Montana. Emergency rates prescribed.

Appearances: J. G. Morrison, W. H. Merriman, for the Northern Pacific Railway Company; L. B. Woods, P. B. Beidelman, for the Great Northern Railway Company; P. J. Peckens, G. W. Blair, Murphy & Whitlock, by Mr. Murphy, for the Chicago, Milwaukee & St. Paul Railway Company; Henry Coulam, for the Oregon Short Line Railroad Company; J. C. Maring, for the Butte, Anaconda & Pacific Railway Company; L. W. Johnston, for the Chicago, Burlington & Quincy Railroad Company; George N. Short, for the Three Forks-Portland Cement Company; Nelson Story, Jr., for himself; A. W. Verharen, William Dryburgh, Henry Kain, for the City of Helena; John N. Edy, George W. Lanstrum, for the State Highway Commission; E. G. Toomey, Counsel, H. B. Schaefer, Rate Expert, for the Board.

Before The Board, en banc, in Helena.

By the Board: In the proceeding entitled In re Freight Rate Advance, 13 M.U.R. 63, P.U.R. 1920-F, 11,

this Board granted the petition of Montana carriers for a general advance in freight service charges of 25 per centum to conform with the interstate increase of 25 per centum established by the Interstate Commerce Commission in the Mountain Pacific group, Ex Parte 74, Increased Rates, 1920, 58 I.C.C. 220, and there assigned its reasons for concert of action; In the further proceeding entitled In re Passenger Fares, etc., 13 M. U. R. 71, P.U.R. 1920-F, 715, the Board said:

"We awarded a twenty-five per centum increase in charges for freight service because the record completely sustained that percentage as reasonable under circumstances requiring a horizontal increase in freight rates; we did not consider evidence as to particular rates, holding these matters for adjustment after September 1, 1920, the effective date of the new freight schedules. We were fully conscious that a horizontal freight rate increase aggravates existing inequalities in the Montana intrastate freight rate structure, affecting particular rates, shippers and localities. But these are special instances for this Board, of its own motion, or for shippers or localities prompted by self-interest and aided by this Board, to bring to light, eradicate or adjust."

By our action In re Freight Advance, supra, we retained plenary control of our intrastate rates, (a matter of some satisfaction in the light of the results reached in the discrimination cases following New York Fares and Charges, 59 I. C. C. 290, whereby one state after another has been rendered impotent in respect to intrastate rate control) and in accord with the announcement made, have, since that time, and pursuant to the provisions of Ex Parte Order No. 304, been at work to examine allegations of injustice and correct wrongs where found. This case is one of the many resulting from the general rate advance.

On November 20, 1919, during the period of Federal Control, the Board made application to the St. Paul District Freight Traffic Committee for the establishment of a scale of distance rates on road building material from sources of supply to stations on all lines within radii of 150 miles, specifically recommending the scale then carried in Sec. 2 of North Pacific Coast Freight Traffic Bureau Tariff No. 25, the Washington scale, as adapted to the existing situation in Montana. On January 30, 1920, the Administration issued Freight Rate Authority 21902, approving rates on sand, gravel, and broken or ground stone, for one, two, or three line hauls, the new basis super-

seeding all rates on a higher basis and representing a 29 per cent reduction for a one line haul, and a 39 per cent reduction for a two line haul, under existing schedules, though not as low as the scale proposed. It was provided that for movements over two or more lines, charges should be assessed on the basis of 85 per cent of the local rates of each line, and this scale became effective generally on or about February 29, 1920. Subsequently on April 28, 1920, the Northern Pacific submitted to the Board, in lieu of the Administration rates, the scale prevailing in Washington (which we originally sought) providing for rates in cents per 100 pounds for hauls on one, two or three lines, petition being made to the Interstate Commerce Commission under Section 208 (a) of "Transportation Act, 1920," relating to reduced rate applications. We approved the petition and forwarded our endorsement thereof to the federal commission. The rates proposed by the petition and representing a reduction of 12 1-2 per cent for an average one line haul and very material reductions for two and three line hauls, under the administration rates, are these:

In Cents Per Hundred Pounds					To Take the Place of These One Line Rates Only.	
Over	Not Over	For One Line Haul	Two Line	Three Line	Not Over	Rate Per Ton
	20 miles	2½	3½	4	10 miles	\$.60
	30 miles	3	4	4½	20 miles	.75
20	40 miles	3½	4½	5	30 miles	.75
30	50 miles	4	5	5½	40 miles	.90
40	60 miles	4½	5½	6	50 miles	.90
50	70 miles	5	6	6½	60 miles	1.00
60	85 miles	5½	6½	7	70 miles	1.10
70					85 miles	1.10
					90 miles	1.15
85	100 miles	6	7	7½	100 miles	1.20
100	115 miles	6½	7½	8	115 miles	1.25
					120 miles	1.25
115	130 miles	7	8	8½	130 miles	1.35
					140 miles	1.35
					145 miles	1.40
130	150 miles	7½	8½	9	150 miles	1.40

For distances over 150 miles, regular class or commodity tariff rates will apply.

After delay of several months the foregoing rates for one and two line hauls, plus the increase of 25 per centum following the action in Increased Rates 1920, supra, became effective, on the lines of the principal Montana carriers involved, on or about December 15, 1920. This result had scarcely been accomplished when shippers and others interested in the movement of sand, gravel, and crushed stone and cement complained that the rates in force were oppressive and precluded transportation of these commodities. Accordingly, the matter was set down for hearing on the March, 1921, Investigation and Suspension Docket. At the hearing representatives of the sand and gravel

industry, contractors, municipal and state engineers interested in highway improvement, and representatives of the cement industry in Montana appeared in support of complaints for reductions. Without attempting to set out, in brief, the testimony of each of these witnesses, it may be said that the record discloses that there is (a) an extensive road building campaign under way in Montana being prosecuted generally throughout the state by the State Highway Commission, the United States Bureau of Public Roads, and boards of county commissioners, (b) a number of municipalities, not less than 15 at the present time, engaged in street and alley grading and paving on a large scale and substantially all the municipalities in the state where street improvement is an activity waiting to commence rather large programs when costs of materials and transportation will permit, and (c) commencement of house-building activity interrupted by the war, and since belated by high costs. It is plain that these undertakings not only represent the accumulation of normal efforts deferred by war, but that in this state, road building, street improvements, and house and office building involving the use of cement, are on the threshold of a very real and very great period of expansion, due to the comparative newness of the state and the magnitude of the improvements reasonably necessary for present needs. Several hundred thousand barrels of cement, between 500,000 and 1,000,000 tons of gravel and at least 500,000 tons of sand await rail movement for projects now in existence. Indeed, definite recognition of this fact was made by the carriers when they followed the voluntary action of the Northern Pacific in petitioning for the Washington scale on sand, gravel, etc., for roads after its rejection by the Administration. There is an emphatic unanimity of statement by complainants that it is now impossible, from a fair business standpoint, to move sand and gravel, etc., and cement by rail in this state. The governmental engineers are in accord on the proposition that all of the work projected for 1921 must fail of a beginning because freight rates preclude the possibility of moving by rail the cement for paving and drainage structures and the sand, gravel, and crushed rock for all the work in question. The engineer for the Helena paving district, a project of 85,000 square yards, details the per yard cost, April, 1920, at \$2.60, and April, 1921, at between \$2.90 and \$3.00, at least eighty-five per cent of the increase directly resulting from increased freight rate; the remainder follows an increase in cement costs. The Helena instance may be taken as

representative of the state-wide situation. Carload movements of the commodities for corresponding periods are shown as follows:

	1920 ALL CARRIERS			1921 N. P., G. N., and C. M. & St. P. (Movements on other lines negligible)		
	Crushed Rock	Sand & Gravel	Cement	Crushed Rock	Sand & Gravel	Cement
January	10	62	134	8	19	52
February	28	41	146	3	12	63
March	29	45	156	5	4	141

While the periods selected for comparison do not contain the months when most of the material in question moves (figures not being available for compilation) it is evident that the 1921 recorded movement, after the increases of 1920, is seriously low, confirming in a measure complainants' contention that the rail service is of no value to them because the rates prohibit movement at a profit.

The record further contains considerable testimony on the prevailing economic situation in Montana, and we are asked to take notice of local conditions in making a rate adjustment. Suffice it to say that the state, from an industrial and commercial standpoint is almost stagnant. Our farmers and stock-raisers on the eastern slope of the Rockies after three years of devastating drouth, are just commencing renewed efforts of production, impulsed principally by eternal hope. During the drouth the mining industry, and its associated activities, logging, lumbering, etc., aided in furnishing employment and rail tonnage. Since April 1, 1921, there has been an almost total cessation of mining and allied operations in consequence of the general shut-down in Butte and other western Montana mining centers, throwing thousands of men out of employment and adversely affecting the entire commercial structure of the state. The only possibility of maintaining hundreds of families on the American minimum of decency is found in the road building, and street paving undertakings, and new building construction scheduled for the 1921 construction season. It may fairly be said, that it is difficult to overdraw the situation in this state. While the business of the country is depressed as a whole, this area presents an acute phase of the problem.

The carriers protest any shrinkage of their rates and contend we should not be moved in the formulation of rates by the extraordinary circumstances now surrounding us though they do not attempt to becloud their reality. To support their contention that present rates are reasonable, the carriers direct attention to the intrastate rates on the same commodities in North Dakota, Minnesota, and other

northwestern states and comparable northwestern interstate movements. It must be conceded that, from a comparative standpoint, Montana rates on the commodities here involved are not "out of line", comparing most favorably with rates in states of decidedly greater density in population. Of course the comparison proves nothing as to the reasonableness of Montana rates, for nothing is offered to show the reasonableness of the rates taken as standards for comparison purposes. *Darling & Co. v. B. & O. R. R. Co.*, 15 I. C. C. 79, 83. Complainants offer Texas and Oklahoma scales as suitable. *Prima facie* these rates come from territories too remote and unlike our own to warrant any thought of them for our purposes; and the presumption against them is not overcome by proof of similar conditions, if possible, for complainants fail to present anything on this score.

Notwithstanding the carriers' argument that we should not be influenced by peculiar economic conditions, we are convinced that for a temporary period at least, the unusually difficult and distressing conditions prevailing in our jurisdiction should be given full weight in the construction of rates for cement, sand and gravel, etc. We think it is manifest from the whole record before us that the present rates, under the present industrial depression, do not take account of the principle that the rate must not exceed the value of the service. We believe it clear from the record that the rate is so high that the service is worth little or nothing to the shipper and consumer, and palpable proof of this is the empty cars rolling past the cement mills, the rock crushers and the gravel pits. It must be remembered here that it is the government, the sovereign, and not the individual private shipper who carries the freight rate load for road-building materials. While the carrier cannot be compelled to meet the needs of a man who cannot pay anything for rail service, and to whom the service is, therefore, without direct value, its rates must always take account of the worth of the service (*In re Advances on Coal to Lake Ports*, 22 I. C. C. 604, 613; *National Hay Assn. v. M. C. R. R. Co.*, 19 I. C. C. 34, 47; *Memphis Cotton Oil Co. v. I. C. C. R. R. Co.*, 17 I. C. C. 313, 318; *So. Pac. Co. v. U. S.*, 197 Fed. 167, 171) and if a whole community is rendered less able to pay for a service because of a succession of economic disasters, it is but fair that the carrier share its part of the misfortune by an attempt to accommodate its rates to popular necessities at least as long as the depression is in full force. (Sec. 11 I. C. C. 238, 271; 9 I. C. C. 382, 406). While the emphasis of late in rate-making, has been on the cost of the service, it is certain that neither courts nor commissions have lost sight of

the opposing element, the "value of the service", and our peculiar condition entitles it to marked, if not dominant, recognition at this time. A lower rate in Montana on the commodities here involved, commodities essential to the growth of the community, will aid in the relief of unemployment and generally help to restore business activity in other avenues of direct benefit to the carriers. Free movement of these commodities for the purposes named will produce greater general good and initiate more consequential activity than any other rates we know of now. Aside from the influence of our own situation, it must be noted that rates on cement, sand, gravel, crushed rock, and other road and house-building materials were excepted by many states from the general freight rate advances of 1920, or only partly advanced at the time of original action or subsequent thereto. Arkansas, Georgia, Indiana, Kansas, Louisiana, Missouri, Nebraska, New Jersey, Oklahoma, South Dakota, and Tennessee, are among the states taking such exceptional action. (State's Brief in *Wisconsin v. C. B. & Q. R. R. Co.*, No. 694, U. S. S. C., Table, P. 160). The decisions reveal uniformity of reasons for the exceptions, namely, the government as the real rate payer, the necessity for normal community development, the need for prompt reconstruction and extension following the war, and the volume of traffic involved. And on the subject of sand, gravel, and rock the Interstate Commerce Commission in *Ex Parte 74*, 58 I. C. C. 220, at 250, while declining then to except these commodities from the operation of the general percentage increases; said:

"The carriers have indicated a willingness promptly to readjust rates in cases where hardship results from the general percentage increases and their special attention is called to these commodities to the end that such action may be taken as the facts may seem to warrant".

If there are any commodities inherently entitled to low rates certainly sand, gravel, and crushed rock for road and other construction purposes, are: Their value is low (*I. C. C. v. Del. L. & W. Rd. Co.*, 64 Fed. 723; *Chicago Live Stock Exchange v. Chicago G. W. Ry. Co.* 10 I. C. C. 428); there is scarcely any risk attendant on shipment (*Scrap Iron Rates*, 28 I. C. C. 467, 468; *Sloss, etc., Co. v. L. & N. Rd. Co.*, 30 I. C. C. 597, 602; *I. C. C. v. Chicago G. W. R.R.Co.* 209, U. S. 108); volume of traffic is comparatively large even in ordinary shipment (*Farar v. Sou. Ry.* 11 I. C. C. 632; *Tift v. Sou. Ry. Co.* 19 I. C. C. 548 and see the same case in 206 U. S. 428); and these commodities are heavy and not bulky making full use of

car space and movable in almost any open top cars (In re Locomotive Transportation 21 I. C. C. 103, 111). Save for the necessity of keeping it dry and using diligence to preserve sacking, cement, from a physical standpoint enjoys like advantages. For the purposes of this case we are not required to treat it separately. Premises considered, we shall order a reduction in rates on sand, gravel, crushed and broken rock and stone and cement to the extent of wiping out the increases established by the general freight rate advance of 1920, and for the period May 20, 1921, to November 20, 1921, inclusive, hereby finding the rates so ordered fair and reasonable, and the existing rates to the extent indicated unreasonable, for the time being. Our action is not to be taken as the commencement of a general assault on the present freight rate structure, nor as aught more than the recognition of an emergency.

Many are already condemning the freight rate advance of 1920 as plainly ruinous and wholly indefensible. We are not ready, now, to say that these rates have had that fair trial which the Supreme Court of the United States requires, and that the trial has demonstrated their unreasonableness. Six months more may reveal the truth. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol at Helena, on Thursday, April 28th, 1921, commencing at ten o'clock A. M., present Chairman Dennis and Commissioners Boyle and Ross, in the matter of the Investigation and Suspension Docket, Item B-8, rates on cement, sand, gravel, broken or crushed rock or stone, this matter being before the Board upon the complaint of various shippers, and the state and municipal governments, and this proceeding being instituted by the initial motion of this Board, and a full investigation of the matters and things involved having been had, the carriers hereinafter named participating therein at public hearing, and the Board having this day filed of record its report containing its findings and conclusions which report is hereby referred to and of this order made a part, and now this Board being fully advised in the premises,

IT IS ORDERED That the Northern Pacific Railway Company; Great Northern Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Oregon Short Line Railroad Company; Billings & Central Montana Railway Company; Butte, Anaconda & Pacific Railway Company; Chicago, Burlington & Quincy Railroad Company; Gilmore

& Pittsburgh Railroad Company, Ltd.; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Montana Western Railway Company; Montana, Wyoming & Southern Railroad Company; and White Sulphur Springs & Yellowstone Park Railway Company, be, and they are, and each of them is, hereby notified and required to establish, on or before May 20, 1921, and thereafter to maintain the following general distance schedule of carload rates, in cents per one hundred pounds, on sand, gravel, and broken or crushed stone, between all stations in Montana, for one and two line hauls, to-wit:

DISTANCE				One Line	Two Lines
Not over	20 miles			2½	3½
Over 20	miles but not over 30 miles			3	4
Over 30	miles but not over 40 miles			3½	4½
Over 40	miles but not over 50 miles			4	5
Over 50	miles but not over 60 miles			4½	5½
Over 60	miles but not over 70 miles			5	6
Over 70	miles but not over 85 miles			5½	6½
Over 85	miles but not over 100 miles			6	7
Over 100	miles but not over 115 miles			6½	7½
Over 115	miles but not over 130 miles			7	8
Over 130	miles but not over 150 miles			7½	8½

IT IS FURTHER ORDERED that the aforesaid carriers, named above, be, and they are, and each of them is, hereby notified and required to establish, on or before May 20, 1921, and thereafter to maintain local and joint carload rates, on cement, in cents per one hundred pounds, the same as in effect on August 31, 1920, between stations in Montana.

IT IS FURTHER ORDERED That in the case of rates on cement, established subsequently to September first, 1920, such rates must be reduced to the basis that would have prevailed had the rates been established before September first, 1920.

IT IS FURTHER ORDERED That nothing herein contained shall in any wise modify or alter any rates on a basis lower than the rates established by this order.

IT IS FURTHER ORDERED That this order shall continue in force and effect to and including the 20th day of November, 1921, when the same shall expire without further action of this board, and that the Secretary shall serve a certified copy of this Report and Order upon each of the parties hereto, and the same shall be in full force and effect forthwith, according to its terms.

Investigation and Suspension Docket.
IN RE GENERAL DISTANCE SCALE OF RATES ON
MANURE, CARLOADS, BETWEEN ALL POINTS.

(February, 1921. Hearing, March 12, 1921.)

(Item: I & S B-4. Decided, May 5, 1921.)

Carriers—Rates—Sheep Manure.

1. Carriers' application to promulgate a mileage scale of rates on sheep manure used to manufacture fertilizer, which exceed existing rates established in 1913 and expanded by all subsequent general advances by approximately seventeen per cent, denied. Carriers ordered to extend existing scale to distances up to 200 miles, and to make appropriate distance divisions under the 25 mile initial distance block now obtaining.

Rates—Reasonableness—Voluntary Establishment.

2. It is a settled proposition of rate-making that where a rate is voluntarily established and maintained for a considerable period, this fact although not conclusive, is strong evidence of the reasonableness of the rate.

Inquiry into reasonableness of proposed distance schedule of intrastate rates on sheep manure in carload lots. Same found to be unreasonable. Rates prescribed.

Appearances: J. G. Morrison, J. E. Spurling, W. H. Merriman, for the Northern Pacific Railway Company; P. B. Beidelman, L. B. Woods, for the Great Northern Railway Company; O. P. Kellogg, G. W. Blair, Murphy & Whitlock, by Mr. Whitlock, for the Chicago, Milwaukee & St. Paul Railway Company; E. G. Toomey, Counsel, H. B. Schaefer, Rate Expert, for the Board. H. Coulam, for the O. S. L.

Before: The Board, **en banc**, in Helena.

By the Board: On November 13, 1920, the Northern Pacific Railway Company filed an application with this Board for authority to promulgate a mileage scale of rates on sheep manure, for distances up to 200 miles, for the purpose of manufacturing fertilizer. The attention of the carrier was called to the fact that the proposed schedule exceeded the rates then in effect from Billings, Montana, and from nearby points into Big Timber, Montana, which rates were established by the Northern Pacific in March, 1913, and February, 1920, respectively. The carrier explained that the Billings rate was the first one established, and that it was made for the purpose of disposing of a large accumulation of the product for the fertilization of the sugar beet area in the Yellowstone district; that there was no precedent to govern and that the rate was undoubtedly too low. In February, 1920, a fertilizer plant came into existing at Big Timber, Montana. It was constructed for the purpose of treating sheep manure by extracting therefrom a certain amount of moisture; and shipping out the

residue. The same scale of distance rates was put into effect on the raw material into Big Timber as was then in effect from Billings.

While the application of the Northern Pacific was under investigation, the Oregon Short Line Railroad Company made application to publish the same scale of rates, to become effective on that line March 4, 1921. The basic structure not being favorably considered by the Board, these applications were tentatively declined, and the carriers notified that the subject would come up for hearing on the Investigation and Suspension Docket for the month of February, 1921. The Oregon Short Line, on February 26, by letter, withdrew its application to publish the rates in question, and was not represented at the hearing on March 12th.

It developed at the hearing that the rates now sought to be established, are to apply on the raw material from the producing sections, to various concentrating plants where it will undergo a process of treatment, substantially as above, and the fertilizer manufactured therefrom will then be shipped from such plants to both state and interstate destinations. In other words, the transporting of the natural manure may be considered as in this nature of a "milling in transit" movement, the carriers profiting by the subsequent shipping of the fertilizer product.

In the state of Minnesota we find that the carriers generally in their tariffs classify manure with sand, gravel, crushed rock, etc. Representatives of the carriers present were unable to assign any reason for the Minnesota classification, expressing the opinion that there was no similarity between manure and the other commodities mentioned, and furthermore contended that cars could not possibly be loaded to the same tonnage capacity, as with gravel, etc. A comparison of the Montana proposed rates on manure with the Minnesota present rates, as referred to above, is as follows:

Distance	Per Ton Montana	Per Ton Minnesota
50 miles.....	\$1.40.....	\$.90.....
100 miles.....	1.65.....	1.20.....
(This relation obtains as the distance increases)		

In November, 1920, the Chicago, Milwaukee & St. Paul Railway Company established a mileage scale of rates on manure, for distances up to 125 miles, based on the Northern Pacific scale into Big Timber, hereinbefore referred to, and applying into Harlowton and Two Dot, Montana. For a better understanding of what the Big Timber, Harlowton, and Two Dot rates are, we quote from the tariffs on file with this Board:

	(N. P.) Big Timber	*(C. M. & St. P.) Harlowton and Two Dot
	Per	Ton
Not over 25 miles.....	\$1.00	\$1.00
Over 25 and not over 50 miles.....	1.10	1.10
Over 50 and not over 75 miles.....	1.30	1.30
Over 75 and not over 100 miles.....		1.40
Over 100 and not over 125 miles.....		1.50

*(Apply only on shipments for concentration, drying, or sacking for reshipment.)

It will be noted that the C. M. & St. P. rates are the same as the Northern Pacific, except that the former have been extended to a distance of 125 miles, and upon the recommendation of the Board that the "Harlowton" scale be adopted as standard, the carriers requested, and were granted, thirty days in which to confer and submit their ideas of uniform, standard scale, no good reason suggesting itself for a different scale on the different lines. As a result, on April 12, 1921, the Oregon Short Line Railroad Company submitted a scale of rates for approval, in which the Northern Pacific and Chicago, Milwaukee & St. Paul companies concurred, with request that we accept the same and authorize the publication thereof on all three lines. The Great Northern company's representatives stated that there was no movement of the commodity on that line, and that the company did not, therefore, wish to become a party to the proposed tariff. We find now that the rates submitted, and which we are asked to approve, exceed the present rates approximately 17 per cent; this notwithstanding that the present scale has benefited by all general advances since first promulgated, including the 25 per cent advance of September 1, 1920, which seems generally to be taken as the high water mark.

After careful inquiry as to the circumstances surrounding the origin of the Billings basis, the carrier's voluntary action with respect to its introduction, the fact that it was devoid of competitive influences, and the fact that it was first projected without reference to the benefits accruing from the second or out-bound haul following treatment of the raw commodity, we find no substantial ground for the contention that the basis was exceptionally low to a degree of unreasonableness when initiated. And since, as above noted, it has enjoyed all the general rate advances accruing since that time, we feel reasonableness still attends it. It is a settled proposition of rate-making that where a rate is volutarily established and maintained for a considerable period, this fact, although not conclusive, is strong evidence of the reasonableness of the rate. (See Lumber Rates from Southern Railway Points to Eastern Points, 31 I. C. C. 244, 253; Minnesota Freight Rates, 32 I. C. C. 361, 364; Stuarts Draft Milling Co. v. S. Ry. Co.,

31 I. C. C. 623). This rate was not only voluntarily established and so maintained for seven years, but seized upon by its author as a fair standard for application to the Big Timber situation, and by another carrier voluntarily graduated in 1920 for distances up to 125 miles—a further proof, on independent considerations, of the reasonableness of the basis, conditions on the two lines being very similar. We see no reason now for changing to the scale proposed by the carriers, our own only requiring extension to distances up to 200 miles, and appropriate distance divisions under the 25 mile initial distance now obtaining.

Upon the whole record before us, we are of the opinion, and so find, that the schedule of rates proposed by the carriers, on manure going to concentrating points for treatment, in carload lots, is excessive and unreasonable to the extent that said schedule exceeds the rates in the order following. An order will be entered accordingly.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana held in its' office in the Capitol at Helena, on Thursday, May 5, 1921, commencing at 10 o'clock A. M., present, Chairman Dennis, and Commissioners Boyle and Ross, in the matter of investigation and Suspension Docket, Item B-4, rates on manure in carload lots, this matter being before the Board upon the application of the Northern Pacific Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Oregon Short Line Railroad Company, and a full investigation of the matters and things involved having been had, the carriers named herein having participated in public hearing hereon, and the Board having this date filed of record its report containing its findings and conclusions herein which report is hereby approved and made a part of this order, and now the Board being fully advised in the premises,

IT IS ORDERED That the Northern Pacific Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Oregon Short Line Railroad Company, be, and they are, and each of them is, hereby notified and required to establish on or before June 1, 1921, and thereafter to maintain until the further order of this Board, the following general distance schedule of rates, carloads, in cents per ton of 2000 pounds, on sheep manure going to concentrating points for treatment or manufacture, to-wit:

Not over 10 miles.....	\$.60 per ton
Over 10 and not over 20 miles.....	.80 per ton
Over 20 and not over 30 miles.....	1.00 per ton
Over 30 and not over 50 miles.....	1.10 per ton
Over 50 and not over 70 miles.....	1.30 per ton
Over 70 and not over 100 miles.....	1.40 per ton
Over 100 and not over 130 miles.....	1.50 per ton
Over 130 and not over 160 miles.....	1.60 per ton
Over 160 and not over 190 miles.....	1.70 per ton
Over 190 and not over 200 miles.....	1.75 per ton
Minimum 50,000 lbs. per car.	

IT IS FURTHER ORDERED That the Secretary shall serve by mail on the carriers parties hereto, a true and certified copy of this report and order, and the latter shall be in full force and effect forthwith, according to its terms.

INVESTIGATION AND SUSPENSION DOCKET IN RE GENERAL DISTANCE SCALE OF FUEL WOOD RATES BETWEEN POINTS IN MONTANA.

(March, 1921. Hearing April 12, 1921.)

(Item I. & S. B-3. Decided May 6, 1921.)

Carriers—Rates—Fuel Wood—Washington-Idaho Basis.

1. Rates on green fuel wood, prescribed by order of March 12, 1921, in "In Re General Distance Scale of Rates Between All Points on Green Fuel Wood," page 28, ante, cancelled; and scale of wood rates found reasonable in 61 I. C. C. 159, 21.2 per centum lower than cancelled scale, adopted as basis for Montana intrastate movement of fuel wood, in lieu of all general distance scales on wood now obtaining in this state.

Fuel Wood—Varies—Practical Distinction.

2. It is futile to attempt to distinguish between the different kinds of fuel wood as a practical matter in ordinary commerce, hence a single scale is adopted.

Fuel Wood—Rates—Foreign Basis—Adoption.

3. Rates adopted after careful inquiry for a territory contiguous to Montana wood producing territory and substantially similar to the pertinent transportation conditions and the industry in such Montana territory, may properly be adopted for intrastate movements of the same commodity in Montana.

Continuation of inquiry into reasonableness of a general distance scale of rates on fuel wood initiated by order of the Board in March, 1921, proceedings on the Investigation and Suspension Docket. Order of March 12, 1921, cancelled and rates prescribed.

Appearances: J. G. Morrison, J. E. Spurling, W. H. Merriman, for the Northern Pacific Railway Company; P. B. Beidleman, L. B. Woods, for the Great Northern Railway Company; O. P. Kellog, G. W. Blair, Murphy and Whitlock, by Mr. Whitlock, for the Chicago, Milwaukee and St. Paul Railway Company; W. P. Coughlin, W. C.

Lubrecht, for the Anaconda Copper Mining Company; Henry Coulam, for the Oregon Short Line Railroad Company; J. C. Maring, for the Butte, Anaconda and Pacific Railway Company; L. W. Johnston, for the Chicago, Burlington and Quincy Railroad Company; D. E. Swinehart, for the Interstate Lumber Company; E. G. Toomey, Counsel, H. B. Schaefer, Rate Expert, for the Board.

Before: The Board, *en banc*, in Helena.

By the Board: By an order entered March 12, 1921, after hearing, the Northern Pacific, Great Northern, and the Chicago, Milwaukee & St. Paul Railway Companies were directed to establish, not later than April 15, 1921, a general distance schedule of rates on green fuel wood between all stations in Montana which was identical with the fuel wood rates applying intrastate in eastern Washington, between eastern and western Washington, and between points in Idaho on the Northern Pacific and Chicago, Milwaukee & St. Paul, and interstate between points in Oregon, Idaho, and eastern Washington. Subsequently to the entry of the order objection was made by the carriers to the phrase "green fuel wood", their contention being that on the record made the order should be restricted to "mill wood and slab wood". Further objection was made by shippers to the minima prescribed. In consequence we set the whole matter for further examination on the I. & S. Docket for April, 1921, and the order of March 12, was thereby suspended.

On March 26, 1921, the Interstate Commerce Commission decided the matters in Investigation and Suspension Docket No. 1251, a proceeding involving Wood rates between North Pacific coast points, 61 I. C. C. 159. We did not have the benefit of a printed copy of this decision until after the April hearing. Therein the whole subject received painstaking consideration, the merits of no less than five distance scales, present and proposed, being examined. As authorized by Section 14, paragraph (4) of the Interstate Commerce Act, the federal commission conferred with the Department of Public Works of Washington and with the Public Utilities Commission of Idaho as to the basis of rates to be prescribed, with the result that the distance scale submitted to those states by the Interstate Commerce Commission was by them approved, and following such approval, the scale was promulgated, to become effective on interstate traffic on or before May 9, 1921. This scale averages 21.2 per centum lower than the scale proposed by the order of March 12, for distances up to four hundred miles. In its construction, however, the Interstate Commerce Commission seems to have made

due allowance for the general rate advance of 1920, rejecting the Oregon scale for the reason that it failed to recognize that increase.

The record furnishes convincing evidence that the carriers consider the pertinent conditions and the industry in eastern Washington and the so-called "eastern district", comprising contiguous territory wherein the commodity moves in Oregon, Idaho, and eastern Washington as substantially similar to the pertinent conditions and the industry in western Montana, and they have not, at any time since the original proposal of the Washington-Idaho scale on February 10, 1921, entered objection to its adoption on the ground that differing rate factors here should put the scale out of consideration. Indeed, the transcript of the March hearing exhibits the straightforward inference grounded on the accord of shippers and carriers on the Washington-Idaho scale, that if such scale is thereafter reduced or advanced in the territory of its origin, the same action may be taken in Montana without protest from either interest; nor was any exception taken or reservation made to the remark of one of the commissioners in the same connection that "the rule will work both ways", i. e. either for reduction or advance.

At both hearings before this Board considerable discussion developed as to the precise variety of fuel wood to be covered by our order and as to the descriptive terms to be employed in designation of the same in the carriers' tariffs. Much of this discussion was consequent on our desire, then, to retain, for dry wood movements, the co-called homesteaders' scale authorized on our application, in 1919, by the United States Railroad Administration. The discussion emphasizes, we think, the futility of attempting to distinguish between the different kinds of fuel wood as a practical matter in ordinary commerce. Dry and green wood is frequently intermingled and there is always a difference of opinion as to when fuel wood is dry and when it is wet. In its order referred to above, the Interstate Commerce Commission grouped "mill wood, which is a by-product of saw mills", "slab wood, which is the refuse of logs manufactured into lumber", and "cord wood, which is a forest product slightly more valuable than slab wood" under the general term "fuel wood", and, additionally, made the scale therefore applicable to pulp wood and wood bolts. Examination develops the fact that when our present dry wood scale in cents per hundred pounds is converted into a per cord scale, on a basis of 2500 pounds to the cord, it averages four cents higher, per cord, than the new Washington-Idaho basis prescribed by the Interstate Commerce Commission, and this average expands in favor of the

latter scale as the per cord weight increases. Because of these things we believe that a single fuel wood scale should prevail in this state in cents per cord of 128 cubic feet. Since the decision in I. & S. Docket 1251, I. C. C., the Washington authorities have adopted the federal scale for all intrastate traffic in fuel wood, and the Public Utilities Commission of Idaho has promulgated the same scale for like intrastate traffic in Northern Idaho; thus it has become the Washington-Idaho scale.

Upon a consideration of the facts of record, we are of the opinion and find that the existing distance scale of rates on fuel wood in Montana, the same being in cents per hundred pounds and the per cord scale proposed by the order of March 12, 1921, are and each of them is unjustified by the relevant facts and traffic conditions, and unreasonable as a matter of law in consequence. We shall order the present distance scale cancelled, cancel our own order of March 12, 1921, and order the establishment of rates on Montana intrastate traffic in fuel wood identical with the rates required in 61 I. C. C. 159. No good reason appearing why all the Montana carriers handling this traffic should not be placed on a uniform basis, lower specific commodity rates on the Butte, Anaconda & Pacific Railway alone excepted, and all such having been made parties hereto, the order will be extended to them.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana held in its office in the Capitol at Helena, on Friday, May 6, 1921, commencing at 10 o'clock A. M., present Chairman Dennis, and Commissioners Boyle and Ross, in the matter of Investigation and Suspension Docket, Item B-3, general distance scale of rates applying between all points on fuel wood, this matter being before the Board upon the complaint of various shippers, and this proceeding being instituted upon the initial motion of this Board, and a full investigation of the matters and things involved having been had, the carriers hereinafter named having participated in public hearings on March 12, 1921, and April 12, 1921, concerning the matters involved, and the Board having this day filed of record its report containing its findings and conclusions herein which report is hereby approved and made a part of this order, and now the Board being fully advised in the premises,

IT IS ORDERED, That said carriers be and they are hereby notified and required to cease and desist, on or before June 1, 1921, and thereafter to abstain from publishing, demanding, or collecting their present rates for intrastate transportation of fuel wood in Montana.

IT IS FURTHER ORDERED, That the Northern Pacific Railway Company; the Great Northern Railway Company; the Chicago, Milwaukee & St. Paul Railway Company; Gilmore & Pittsburgh Railroad Company; Chicago, Burlington & Quincy Railroad Company; Oregon Short Line Railroad Company; Minneapolis, St. Paul & Saulte Ste. Marie Railway Company; and White Sulphur Springs & Yellowstone Park Railway Company be, and they are, and each of them is, hereby notified and required to establish, on or before June 1, 1921, and thereafter to maintain and apply, until the further order of this Board, the following general distance schedule of rates on fuel wood between all stations in Montana, in the place and stead of any and all general distance scales on wood now obtaining in this state:

Distances		Rates per Cord of 128 Cu. Ft.	Distances		Rates per Cord of 128 Cu. Ft.
Not over 10 miles.....		\$1.15	Not over 210 miles.....		\$3.125
Not over 20 miles.....		1.25	Not over 220 miles.....		3.20
Not over 30 miles.....		1.35	Not over 230 miles.....		3.275
Not over 40 miles.....		1.45	Not over 240 miles.....		3.35
Not over 50 miles.....		1.55	Not over 250 miles.....		3.425
Not over 60 miles.....		1.65	Not over 260 miles.....		3.50
Not over 70 miles.....		1.75	Not over 270 miles.....		3.575
Not over 80 miles.....		1.85	Not over 280 miles.....		3.65
Not over 90 miles.....		1.95	Not over 290 miles.....		3.725
Not over 100 miles.....		2.05	Not over 300 miles.....		3.80
Not over 110 miles.....		2.15	Not over 320 miles.....		3.90
Not over 120 miles.....		2.25	Not over 340 miles.....		4.00
Not over 130 miles.....		2.35	Not over 360 miles.....		4.10
Not over 140 miles.....		2.45	Not over 380 miles.....		4.20
Not over 150 miles.....		2.55	Not over 400 miles.....		4.30
Not over 160 miles.....		2.65	Not over 420 miles.....		4.40
Not over 170 miles.....		2.75	Not over 440 miles.....		4.50
Not over 180 miles.....		2.85	Not over 460 miles.....		4.60
Not over 190 miles.....		2.95	Not over 480 miles.....		4.70
Not over 200 miles.....		3.05	Not over 500 miles.....		4.80

IT IS FURTHER ORDERED, That the Butte, Anaconda and Pacific Railway Company be, and it is hereby notified and required to establish on or before June 1, 1921, and thereafter to maintain and apply, until the further order of this Board, the general distance scale of rates on fuel wood identical with the scale above set out save and except that existing specific commodity rates shall be maintained as exceptions thereto where the said specific commodity rates are on a lower basis than rates for corresponding distances in the general distance scale.

IT IS FURTHER ORDERED, That the Report and Order entered by this Board on March 12, 1921, under the I. & S. Docket number above, be and the same is hereby cancelled and held of no force and effect.

IT IS FURTHER ORDERED, That the Secretary shall serve a certified copy of this order upon each of the parties hereto and that the same shall be in full force and effect forthwith according to its terms.

Investigation and Suspension Docket.
IN RE RATES ON BIG BLACKFOOT BRANCH OF THE
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY
COMPANY.

(March 1921. Hearing March 12, 1921.)
(Item: I. & S. B-1. Decided June 4, 1921.)

Rates—Reasonableness—Branch Lines.

1. Where a transcontinental carrier had absorbed a short independent rail line four years prior to this case, and had operated and was operating the same as an integral part of one of its principal divisions, but had continued to charge and was charging rates for movements from main line points to branch line points by assessing the combination of local rates on the junction point of main and branch lines, held, that such combination rates were unreasonable, and carrier was ordered to establish, in lieu thereof, rates constructed on the Montana general distance scale basis.

Rates—Through Rates—Jurisdiction.

2. The Board of Railroad Commissioners has the power to order the establishment of through intrastate rates by eliminating basing point combinations at branch line junctions on the line of any carrier within this state, Secs. 4373, 4375, 4377, Revised Codes, 1907, considered.

Rates—Through Rates—Definition.

3. A rate applicable from the point of origin of a shipment to its destination is a through rate. Where there is through carriage on a single line of railroad from a main line point to a branch line point or the reverse, and a single rate established and quoted for the entire movement that rate is through, in the sense that it is a unit; nor is a rate any the less a through rate because it is composed of the aggregate of intermediate rates.

Rates—Branch Line—Earnings.

4. A carrier is without a positive legal right to seize upon a single branch line and endeavor to make the traffic thereon bear an undue portion of the costs of its maintenance and operation at any time. Railroads are constructed as a whole, operated as a whole, and rates thereon should be built on the principle of system identity.

Rates—Branch Lines—New Construction—Meagre Traffic—Time.

5. If there is merit in the proposition that a newly constructed branch line with comparatively meagre traffic should enjoy higher rates for the time being than the main line through well developed territory where the density of the traffic is much greater, the force of the proposition expires when sufficient time has elapsed to show conditions of substantial similiarity on both lines, or that there is not reasonable present prospect of corresponding traffic development on such branch line.

Inquiry into the reasonableness of respondent's practice in maintaining combinations of local rates on Bonner, Montana, for intrastate freight movements destined to, or originating at, stations on its Big Blackfoot Branch. Through rates prescribed.

Appearances: O. P. Kellogg, G. W. Blair, A. N. Whitlock, for the Chicago, Milwaukee & St. Paul Railway Company; H. B. Schaefer, Rate Expert, E. G. Toomey, Counsel, for the Board.

Before: The Board, en banc, in Helena.

By the Board: On or about January 3, 1917, the Chicago, Milwaukee & St. Paul Railway Company accomplished the absorption of the property of the Big Black-

foot Railway Company in the State of Montana, and thereby became the owner and operator of the latter's lines of railway then completed from Bonner, Montana, to McNamara Junction, Montana, a distance of 11.48 miles. Subsequently the line was, by its new owner, constructed to, and operated as far east as Douglas, Montana, distant approximately 12.7 miles from Bonner. The branch really represents the western terminal of a projected line extending northeasterly from Bonner, Montana, through Missoula, Powell, and Lewis and Clark Counties to Dracut in Cascade County on the Great Falls-Agawam Branch. The completed line is now and has been operated as a part of the Missoula Division of the Chicago, Milwaukee and St. Paul Railway Company. Contemporaneous with the consummation of the purchase of the lines in January, 1917, the purchaser adopted as its own the existing tariffs of the Big Blackfoot Railway Company for rates on the branch; and for movements from main line points to branch line points and vice versa, intrastate, charged rates by assessing the combination of local rates on Bonner, Montana. Interstate rates from or to such branch line points were built on a proportional basis.

From time to time since the expiration of Federal control the matter of establishing through rates from points on the Big Blackfoot Branch to main line points without reference to Bonner as a basing point, and from such points to branch line points, intrastate, has been referred to the carrier for consideration, along with at least one complaint, from a shipper seeking the establishment of through commodity rates on a mileage basis or class rates up to Class E. Failing of informal adjustment the matter was set down for the March, 1921, Investigation and Suspension Docket and since hearing, has been held in abeyance pending the completion of the company's case. The record presents two questions, first, has this Board the power to order the establishment of through intrastate rates by eliminating basing point combinations at branch line junctions on the line of any carrier within this state, and second, if such power exists should it be exercised in the instant case to accomplish such ends?

The act creating the Board affirmatively answers the first question. Section 11, now Section 4373, Revised Codes, 1907, defines the scope of the act as follows:

"The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith,

and shall apply to railroad companies, express companies, car companies, sleeping car companies, freight and freight line companies, and to any shipments of property made from any point within this state to any other point within this state, whether the transportation of the same shall be wholly within this state, or partly within this state and partly within an adjoining state or states. The term 'transportation' shall include all instrumentalities of shipment or carriage. The term 'railroad' shall be taken to mean any corporation, company or individual owning or operating any railroad, in whole or in part, in this state. It shall also include express companies and sleeping car companies. The term 'Board' in this act shall be taken to mean the Board of Railroad Commissioners of the State of Montana. The provisions of this act shall apply to all persons, firms or companies, incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state."

Section 13 of the act now found as Section 4375 Revised Codes, provides in part:

"The power and authority is hereby vested in the said Board, and it is hereby made its duty to adopt as soon as practicable after the organization of the Board, all necessary rates, charges and regulations to govern and regulate freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and to make the same effective by enforcing the penalties prescribed in this Act.

"The said Board shall have the power, and it shall be its duty, to fairly and justly classify and subdivide all freight and merchandise of whatsoever character that may be transported over the railroads of this state, into such general and special classes or subdivisions as may be deemed necessary or expedient. The said Board may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

"Said Board shall also have the power, and it shall be its duty, to fix and establish for all or

any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads. The rates, tolls or charges on any property which shall for any reason remain unclassified by the Board shall not in any event exceed the highest rates fixed for any classification by said Board. * * *

And the first sentence of Section 15, now Section 4377, Revised Codes, 1907, which must be construed with the foregoing section as a matter of course, provides as follows:

“The said Board shall have the power from time to time to change, alter, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates. * * *

It is obvious from a careful reading of these provisions, and confirmed on scrutiny, that, in the broad, general language of this grant there exists plenary authority, subject only to the omnipresent limitations of “reasonableness” to fix all necessary rates and charges for the public services of common carriers however those rates may be denominated or constructed.

This brings us to a consideration of the precise rate situation here involved, whether it is now reasonable, and if not, what modification should be made. The record contains considerable discussion about the propriety of establishing “through rates” on the Big Blackfoot branch, whereas there now exists to and from points thereon, what are, strictly speaking, through rates. A rate applicable from the point of origin of a shipment to its destination is a through rate. *Lanning-Harris Co. v. Mo. Pac.* 13 I.C.C. 154; *In re Through Routes and Through Rates*, 12 I.C.C. 164. Where there is through carriage on a single line of railroad from a main line point to a branch line point, or the reverse, and a single rate established and quoted for the entire movement, that rate is through in the sense that it is a unit. Such is the case here. “The through rate is a unit from point of origin to destination even though it is made up of separately established rates”. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 27 I.C.C. 302, 318. Hence the fact that the rates here involved are found by taking the sum of the two locals on Bonner does not deprive them of the character of through rates; nor would the participation of several carriers make any difference as long as the

through carriage is covered by a specific rate from point of origin to destination. The mere fact that a through rate is composed of the aggregate of intermediate rates is not sufficient to condemn it without proof that such an adjustment results in through rates which are unreasonable. *Western Pine Mfgs. Assn. v. C. I. & W. Rd. Co.* 46 I. C. C. 650, 655. What is in the minds of all concerned here is the justification for establishing between intrastate points on the same line of railroad, operated by the same carrier, rates composed of the aggregate of intermediate rates on some intermediate stations selected by the carrier as a basing point. In other words, what necessity exists for treating different portions of the line in a different fashion in the construction of rates?

For the carrier it is insisted, in substance, that we should deal with the Big Blackfoot branch line as if it were a separate line of road. Operating data are submitted which show that for the year 1920, the total revenues of the branch, including both state and interstate traffic (incorporating charges for the entire movement in the case of the latter traffic) were \$8,954.45 while operating costs were \$51,422.93. This showing, it is insisted, should restrain us from ordering in a flat distance basis which must inevitably reduce present rates, for branch lines are to be encouraged in Montana, and, even though they are not to be divorced completely, from the main line so far as rates go, they should be nursed by higher rates "until they are given a chance to pay their own way". Carload tonnage received from December, 1919, to May, 1920, was almost exclusively of interstate origin and it is argued therefrom that erasure of the basing point combinations will afford little benefit to Montana shippers or consignees. If the present rates are to conform to the general Montana distance scale, reductions will average 39 per cent.

The following table shows the class rates from Missoula to Douglas on the line of the Milwaukee as compared with similar rates for like distance on other Montana lines:

	Distance	Montana Lines									
		CLASSES									
		1	2	3	4	5	A	B	C	D	E
C. M. & St. P. (1)											
Missoula to Bonner	6.3	20½	17½	14½	12½	11½	11½	8	6½	5	5
Bonner to Douglas	12.7	27	24	20½	17½	14½	14½	11½	8	8	6½
Thru Rate..	19.0	47½	41½	35	30	26	26	19½	14½	13	11½
Based on		30	25	20½	17½	15½	15½	12½	9½	8	6½
Thru Dist. N. P. (2)											
Billings to Mason	19.3	30	25	20½	17½	15½	15½	12½	9½	8	6½
Helena to.....											
Rimini	17.1	30	25	20½	17½	15½	15½	12½	9½	8	6½
G. N. (3)											
Gt. Falls to Stockett	18.2	30	25	20½	17½	15½	15½	12½	9½	8	6½

Tariff Authority: (1) C. M. & St. P. 12248-B, M. R. C. 87; C. M. & St. P. 13721-D, M. R. C. 106, C. M. & St. P. 12248-B, M. R. C. 87, (2) Nor. Pac. 717-F, M. R. C. 510; Nor. Pac. 717-F, M. R. C. 510; (3) Gt. Nor. 950-C, M. R. C. 241.

After a careful review of the record we are of the opinion, and so find, that there does not now exist any valid reason for maintaining the present combination rates for traffic on the Big Blackfoot branch, and that the same are unreasonable, result in unreasonable through rates, and should be superseded by the application of through rates conforming to the Montana general distance scales. If there is merit in the proposition that a newly constructed branch line with comparatively meagre traffic should enjoy higher rates for the time being than the main line through well developed territory where the density of the traffic is much greater, (Commercial Club of Omaha v. C. & N. W. Ry. Co., 19 I.C.C. 156; Acme, etc. Co., v. C. & N. W. Ry. Co. 18 I.C.C. 105, 106; Du Mee, Son & Co. v. Alabama, T. & N. Rd. Co. 19 I.C.C. 575, 576) the force of the proposition expires when sufficient time has elapsed to show conditions of substantial similarity on both lines, or that there is not reasonable present prospect of corresponding traffic development on such branch line. It does not seem reasonable to maintain higher branch line rates in perpetuity where, as here, the branch is an integral unit of a great system serving an extensive territory. To insist on a permanent rate exception for branch lines would, in the end, largely nullify their value and utility. This Board has been solicitous of branch line development and in this particular instance has extended higher rates to the Big Blackfoot line (always dominated by the Milwaukee and in equity so owned) since it commenced operations as a common carrier at least eight years ago. We are convinced now that the line, more or less indifferently operated, is not,

at its present length and location, susceptible of developing greatly increased traffic, and has reached a relatively stationary state. As the first leg of the projected line it has developed about as much traffic as it can, and we do not feel that equal treatment of shippers on that branch should be postponed until the projected line is completed or approaches the normal Montana branch line. These contingencies are too remote to warrant serious concern when weighed against the justice of shippers' claims to like treatment with main line shippers, especially after eight years or more of high rate nourishment. No substantial difference in operating conditions or service difficulties appears in the record whereon to justify a continuance of the present difference in treatment. And the service rendered it about as inexpensive as it is possible to provide.

Without regard, now, to the soundness or propriety of the practice of indulging initial higher rates on branch lines, which has here been done, it is our opinion that the carrier is without a positive legal right to seize upon a single branch line, and endeavor to make the traffic thereon bear an undue portion of the cost of its maintenance and operation at any time. Railroads are constructed as a whole, operated as a whole, and rates thereon should be built on the principle of system identity. Branch lines are constructed to nourish the trunk line and to make the latter available to persons and localities otherwise without railroad service. Some feed the trunk generously; others feed on the trunk. The accidents of prosperity, however, in any given rate area, are not enough to warrant different rates on the different branches any more than the Rocky Mountains in Western Montana and consequent increased costs of operation afford a basis for higher distance rates than are applied on the plains of Eastern Montana. The principle has been variously illuminated by the Interstate Commerce Commission and the United States Supreme Court. From the former:

"We do not recognize the right of a carrier to single out a piece of expensive road and make the local traffic thereon bear an undue portion of its maintenance or construction. A road is built and operated as a whole and local rates are not to be made with respect to the difficulties of each particular portion, charging the cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths." Traffic Bureau, etc. v. So. Pac. Co., 19 I.C.C. 259, 261.

In discussing the validity of a maximum fare statute of the State of Arkansas, the Federal Supreme Court refused

to measure it against one of two lines which had entered into a consolidation, saying:

"In this state of facts we agree with the views of the Supreme Court of Arkansas, as disclosed in the opinion contained in the record, and which were to the effect that the correct test was as to the effect of the act on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidated roads; that the company cannot claim the right to earn a net profit from every mile, section, or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expenses under the operation of the act within the limits of the State of Arkansas." *St. Louis, etc. Ry. Co. v. Gill*, 156 U. S. 649 at 665, 666.

This principle is emphasized in *Puget Sound Traction Co. v. Reynolds*, 244 U. S. 574, where the court refused to look at the effect of a rate regulation of the Public Service Commission of Washington on three certain lines of a street railway system, which lines, "separately considered, never have paid operating expenses and probably never will". There it was not contended that the system earnings were unremunerative; here it is not contended that Montana intrastate earnings as a whole are unremunerative when assigned against proper expenses. Nothing contained in *Brooks-Scanlon Co. v. R. R. Comm.* 251 U. S. 396, affects the force of these decisions. Our records show that there is not another carrier in Montana now applying combination rates to branch lines, and this irrespective of their earnings and expenses separately considered, nor is the *Chicago, Milwaukee & St. Paul* insisting on the practice with respect to any other branch line operated by it in Montana. This fact is significant of the unreasonableness of the present exception particularly since the carrier has not sought to justify the distinction save on a revenue basis. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol, at Helena, Montana, on June 4, 1921, in the matter of the reasonableness of the present intrastate freight rates maintained by the Chicago, Milwaukee & St. Paul Railway Company on its Big Blackfoot Branch, in Missoula County, Montana, governing freight movements destined to, or originating at, stations on said branch; this matter being before the Board upon the complaint of shippers, and upon the initial motion of said Board, and hearing thereon having been had on the initial motion of said Board, on the 12th day of March, 1921, under Investigation and Suspension Docket Item I. & S. B-1, and a full investigation of the matters and things involved having been had, and the Board having on the date hereof made and filed a report containing its findings and conclusions therein, which said report is hereby approved and made a part hereof, and now the Board being fully advised in the premises,

IT IS THEREFORE ORDERED That the Chicago, Milwaukee & St. Paul Railway Company be, and it is hereby notified and required to cease and desist on or before July 1, 1921, and thereafter to abstain from publishing, demanding or collecting its present combination rates for intrastate transportation of freight, destined to, or originating at, stations on its Big Blackfoot branch.

IT IS FURTHER ORDERED That the Chicago, Milwaukee & St. Paul Railway Company be, and it is hereby notified and required to establish on or before July 1, 1921, and thereafter to maintain and apply until the further order of this Board, the Montana general distance scales of freight rates for intrastate freight destined to, or originating at, stations on its Big Blackfoot branch, and that all and singular, the rates for said movements shall be on through general distance scale bases, and not upon a combination of locals on Bonner, Montana, or any other points.

IT IS FURTHER ORDERED That the Secretary shall serve by mail a certified copy of this order upon each of the parties hereto, and that the same shall be in full force and effect forthwith, according to its terms.

IN RE MONTANA EXPRESS RATES.

(Docket No. 788. Report and Order No. 323.)
 (Hearing May 25 and 26, 1921. Decided August 1, 1921.)

Express Rates—Horizontal Increase—Denied.

1. The application of the American Railway Express Company for an order advancing intrastate express rates 26 per centum and to alter and amend its classification of commodities, all in accord with 58 I. C. C. 281 and 58 I. C. C. 707, denied.

Express Rates—Intrastate Structure—Reasonableness—Jurisdiction.

2. Since the Board of Railroad Commissioners of Montana is concerned only with the intrastate services of the American Railway Express Company, any application for increased rates for such service should be supported by proof exhibiting those elements and proportions of the company's property which are dedicated to intrastate service, and such elements of the rail carriers' property as are allied therewith, the revenues from such service and the expenses of that service. Where this is not done, but on the contrary, the company relies on its case for an increase in interstate rates before the Interstate Commerce Commission, it fails to make out a *prima facie* case for the Montana Board.

Express Rates—Intrastate Commerce—Reasonableness—How Determined—Transportation Act.

3. The "Transportation Act, 1920" does not disturb the long line of decisions grounded on the provisions of the Federal constitution which hold that calculations as to what shall constitute a reasonable rate of return from property devoted to internal commerce shall be made without regard to the returns from interstate commerce.

Application of the American Railway Express Company for an order advancing intrastate express rates 26 per cent, and to alter and amend its classification of commodities. Application denied.

Appearances: Charles E. Elmquist, St. Paul, Minnesota, for the American Railway Express Company; E. L. Coleman, Traffic Director, for the Billings Commercial Club; M. Max Goodsill, Managing Secretary, for the Helena Commercial Club; F. J. O'Boyle, Traffic Manager, for the Henningsen Produce Company, Butte, Yellowstone Creamery Company, Billings, and Western Creamery Company, Miles City; C. W. Fowler, Secretary, J. A. Smith, Traffic Manager, for the Montana Development Association; J. E. O'Connell, Alex Benson, for Montana bakers and bakeries; E. G. Toomey, Counsel, for the Board.

Before: The Board, *en banc*, in Helena.

By the Board: On June 21, 1921, pending the disposition of its cause before the Interstate Commerce Commission, the American Railway Express Company filed with this Board its formal application for permission to put into effect within the State of Montana "whatever rates are authorized by the Interstate Commerce Commission in the proceeding before it, or rates corresponding thereto, and that until an order has been made by the Interstate Commerce Commission in the proceeding before it this proceeding be held in abeyance". The petition was similar in form and substance to that filed with each of the State

Commissions. By July 23, 1920, the proceeding before the Interstate Commerce Commission was submitted for decision, and on August 11, 1920, that tribunal authorized as "justified" an increase of 12.5 per cent over the interstate express rates then in force, refusing the company's request for an average increase of 25.16 per cent. Requests of shippers for the exemption of certain commodities from the application of increased rates were not received with favor and the prescription of "terminal to terminal" rates to apply in the absence of pick-up and delivery service was deemed unwarranted by the record. The privilege of equalizing rates on milk and cream with contemporaneous competitive rail rates in effect on those commodities was extended the express carrier. **Express Rates, 1920, 58 I. C. C. 291.** By supplemental petition filed August 19, 1920, the applicant brought to the attention of the Interstate Commerce Commission the fact that by decision Nos. 2 and 3, of July 20, and August 10, 1920, the United States Railroad Labor Board awarded increased wages to certain classes of the company's employees. These increases were estimated at \$44,258,903.00 per annum. After further hearing, the Interstate Commerce Commission on September 21, 1920, authorized an additional increase of 13.5 per cent in class and commodity rates to meet the expansion in operating expenses incurred by the wage awards, denying the 15 per cent increase sought by the carrier. **Express Rates, 1920, 58 I. C. C. 707.** Following these decisions the company filed an amended application with this Board on November 5, 1920, reciting the action of the federal commission and praying for the same percentage of increase in intrastate rates.

Present Rate Structure.

After an exhaustive investigation entitled, **In Re Express Rates, Practices, Accounts and Revenues, 24 I. C. C. 380, and 28 I. C. C. 131,** the Interstate Commerce Commission prescribed uniform schedules of interstate rates, classification, rules, and regulations, effective February 1, 1914, for the principal express companies then doing business on the railroads of the United States and whose operations have been taken over and are now conducted by the American Railway Express Company. In formulating the schedule of rates, a new system was adopted, comprising, except as hereinafter noted, an express terminal allowance of 20 cents per shipment, varying neither with weight nor with distance, a rail-terminal allowance of 25 cents per 100 pounds, varying only with weight, and a rail transportation or haulage charge per 100 pounds, varying both with weight and distance. The country was divided

into five zones and rates were constructed for application therein and between zones by 50-mile blocks and by sub-blocks for short distances. The exception above referred to was that in zone 4 the express-terminal and rail-terminal allowances were made 25 and 50 cents, respectively. The resulting rates were lowest in zone 1, embracing substantially what is known as Official Classification territory in the freight business, and highest in zone 4, embracing roughly the territory west of a north-and-south line through Denver, Colorado, and east of California, Oregon, and Washington, including nearly the entire extent of our own state. In a report in the same case on rehearing, 35 I. C. C. 3, July 14, 1915, the Interstate Commerce Commission authorized a transposition of the 20-cent express-terminal and the 25-cent rail-terminal allowances, which slightly increased the charges on packages weighing less than 100 pounds and approximated an increase in gross revenue of 3.86 per cent. In **Proposed Increase in Express Rates**, 50 I. C. C. 385, decided June 17, 1918, the federal commission approved a general increase of 10 per cent in the interstate rates. On January 1, 1919, by his General Order No. 56, the Director General of Railroads inaugurated increased charges for the purpose of securing additional gross revenue from express transportation of \$23,679,000. This was effected by making an increase in zone 1, and between it and the other zones, of three scales on the first two classes, an increase in and between the zones other than zone 1 of two scales on the first two classes, and an increase of 10 cents per 100 pounds on commodity rates. **Increases in Express Rates**, 51 I. C. C. 263. This is estimated by the company to have approximated an increase of 8 per cent. Within this state the express rate structure rested for about two years on the foundation established by Order No. 10 of this Board, dated January 4, 1908, **I Mont. R. R. & P. S. C. Reports** 86, 123, whereby the Board approved the tariffs of the Adams, Great Northern, Northern and Pacific Express Companies in force on that date. This, being the first action of the Board in the premises was, of course, simply to put the rates and charges then maintained by the companies in force by virtue of the new statute creating the Board. In November, 1909, the Board commenced a proceeding upon its initial motion to determine the reasonableness of the Montana intrastate express rate structure. After prolonged investigation and proceedings in rehearing, **3 Mont. R. R. & P. S. C. Reports** 36-49, a new basic structure for merchandise and so-called "general-specials" was evolved; likewise for fruit, vegetables, butter, cheese, eggs,

dressed poultry, and fresh meat. Very marked reductions were thereby accomplished on the lines of all express carriers operating in Montana. The structure then adopted endured without substantial variation until the war period. Notwithstanding the adoption of the block system by the Interstate Commerce Commission, effective February 1, 1914, this Board refused to extend the operation thereof to this state, believing that its features unduly prejudiced and discriminated against Montana shippers. In June 1918, however, before the Director General assumed control of the express carriers, Montana, in company with four other states were urged by the United States Railroad Administration to conform its rates, for the sake of uniformity during war operations with the rates prescribed by the Interstate Commerce Commission, and this meant, of course, the extension of the block system to Montana. Realizing that the Director General might himself file such rates for Montana, irrespective of any action by this Board, not desiring to obstruct the rate policy conceived by the railroad administration as essential to the successful prosecution of the war, and standing with a very small minority of the states, we yielded to the importunities of the time. The block system and accompanying tariffs including commodity rates on bread, butter, cheese, dressed hogs, poultry, etc., on a basis of approximately 60 per cent of the first-class express rates, became effective in this state September 5, 1918, and carried the ten per cent increase granted by the Interstate Commerce Commission June 17, 1918. By General Order No. 56, of the Director General, these rates were further increased about 8 per cent under a plan reported on by the Interstate Commerce Commission under section 8 of the federal control act, 51 I. C. C. 263, and today this is the basis of rates obtaining in Montana.

Proposed Rate Changes.

The precise changes proposed by the company, and their relation expressed in terms of percentage, to the rates in force September 4, 1918, and the present war-compelled rates, here appear for representative distances. The rates are stated in cents per 100 pounds:

Distances Miles.....	M E R C H A N D I S E				B U T T E R, E G G S, C H E E S E, F R U I T, V E G E T A B L E S, D R E S S E D P O U L T R Y & F R E S H M E A T			
	Rate 9-4-18.....	Rate Present.....	Rate Proposed.....	% Increase Rate proposed Above 9-4-18.	Rate 9-4-18.....	Rate Present.....	Rate Proposed.....	% Increase Rate Proposed Above 9-4-18.....
15	40	77	97	142.5	40	54	67	67.5
25	50	93	110	120.0	40	58	73	82.5
30	60	93	110	83.3	40	58	73	82.5
35	60	110	139	131.6	40	66	83	107.5
40	75	110	139	85.3	50	66	83	66.0
50	90	126	159	76.6	55	79	98	78.2
100	110	154	194	76.3	70	96	119	70.0
150	150	181	228	52.0	90	112	140	55.5
200	200	214	270	35.0	115	132	167	46.5
250	225	242	305	35.5	130	148	187	43.8
300	275	269	339	23.2	160	165	208	30.0
350	300	297	374	24.6	160	181	229	43.1
400	300	324	408	36.0	175	198	250	42.8
450	325	352	444	36.6	190	214	270	42.1
500	350	374	471	34.5	200	228	286	43.0
550	350	401	505	44.3	200	244	306	50.3
600	375	429	541	44.3	215	261	327	52.1
650	400	451	568	42.0	230	273	343	49.1
700	400	473	596	49.0	230	285	359	56.0
750	425	495	624	46.8	245	297	374	52.6
800	450	522	658	46.2	250	313	395	58.0
I C E C R E A M A N D L A U N D R Y					B R E A D			
15	40	58	73	82.5	40	58	73	82.5
25	40	70	88	120.0	40	70	88	120.0
30	50	70	88	76.0	40	70	88	120.0
35	50	82	104	108.0	40	82	104	160.0
40	60	82	104	73.3	50	82	104	108.0
50	75	96	119	58.7	60	96	119	98.3
100	85	115	146	71.7	80	115	146	82.5
150	120	136	171	42.5	110	136	171	55.4
200	150	162	203	35.3	140	162	203	45.0
250	190	181	229	20.5	150	181	229	52.6
300	210	202	254	20.9	190	202	254	33.6
350	225	223	281	24.9	190	223	281	47.9
400	225	244	306	36.6	210	244	306	45.7
450	250	264	333	33.2	225	264	333	48.0
500	250	280	353	41.2	250	280	353	41.2
550	250	301	379	51.6	250	301	379	51.6
600	275	322	406	47.6	250	322	406	62.4
650	290	339	426	46.9	275	339	426	54.9
700	290	355	447	54.1	275	355	447	62.5
750	300	372	468	56.0	290	372	468	61.4
800	300	393	494	64.6	300	393	494	64.7

Average per cent Increase Rates Proposed above Rates in Effect September 4, 1918:

Merchandise	60.3
Butter, Eggs, Cheese, etc.	58.0
Ice Cream and Laundry	55.5
Bread	71.3

Applicant's Case.

To sustain the claims in its behalf the company presented three witnesses, its General Auditor for the Chicago Regional Accounting Department of the American Railway Express Company, the Superintendent of Transportation and Traffic of the Pacific Department and the Superintendent of the Montana Division of the company, in the order named. The accounting official, through

the medium of the book of exhibits filed with the Interstate Commerce Commission, and with the various state commissions read into the record a statement showing the results of domestic express transportation operations of the seven principal express carriers prior to July 1, 1918, and of the present consolidated agency subsequent to June 30, 1918, for the years ending December 31, 1911 to 1919, inclusive. The statement, and the exhibit on which it rests, reflect, operations of the present company (and through the first half of 1918 for constituent carriers) as a whole throughout the United States. The outstanding figures of that statement are these:

Year	Total Optg. Revenue	Total Optg. Expenses less Taxes & Uncol- lectible Revenues	Operating Income
1911	\$ 61,847,250.89	\$ 53,056,611.26	\$ 7,661,076.07
1912	67,696,274.76	61,443,210.73	5,027,097.60
1913	64,543,289.11	62,957,550.86	425,122.26
1914	63,438,033.29	64,541,889.42	2,415,773.09*
1915	74,948,234.10	67,393,832.34	6,305,717.50
1916	91,725,059.01	83,800,214.73	6,439,180.44
1917	106,161,726.64	109,523,989.93	5,473,694.78*
1918	125,164,770.10	155,012,288.94	31,639,047.20*
1919	147,667,299.01	167,643,366.62	22,036,352.13*

NOTE: *Deficit.

For 1920, the operating deficit is shown to be \$41,364,059.06, or an increase over adjusted figures for 1919, of \$16,258,113.38. It further appears from the same source through this witness that while the gross express revenue for 1919, \$285,905,405.40 exceeded that of 1911 by 132.02 per cent, the total wage charge for 1919 exceeded the same item in 1911 by 209.06 per cent, while the total of "other expenses" for 1919 exceeded the identical item in 1911 by 219.59 per cent. Other exhibits, constructed on the national plan, reveal national deficiencies and difficulties and are strongly persuasive, **from the system standpoint**, of the necessity for rate relief. It is asserted that the net income resulting from the application of the 26 per cent increase to the company's entire interstate and intrastate business, using the year 1919 as a basis, would be, \$1,094,281.14 (and so the federal commission prognosticated in its decision of September 21, 1920) while the failure of Montana to advance its intrastate rates as prayed for would reduce the figure to \$892,796.42. The same witness offers other exhibits from which he deduces that Montana intrastate business for the eight months ended August 31, 1920, during which time the government assumed the express company's losses and preceding the execution of the new rail contract of September, 1920, shows a loss of \$140,906.50.

The succeeding six months ended February 28, 1921, under the new contract, show a net income of \$2,588.60. These exhibits, together with some which endeavor to estimate the effect on wages of employes in this state, of the wage award granted by the United States Railroad Labor Board depend for their accuracy on certain hypothesis of accounting. For example, the witness explains at one point with reference to the item of "maintenance" in an allocation of expenses to Montana intrastate traffic that the ratio which system expenses bear to system gross earnings has been applied to Montana gross earnings to arrive at the expenses applicable to Montana intrastate traffic. And again, "if the system gross transportation revenue was ten million dollars as assumed by you, and the Montana corresponding revenue, intrastate, was one million dollars then we could charge Montana ten per cent of the total system operating expense". Unquestionably there is considerable difficulty in effecting an approximately accurate segregation of interstate and intrastate expenses for men and instrumentalities are, in our state, as elsewhere, employed throughout each business day, in indiscriminate fashion, in handling each kind of traffic. But the infirmities resulting from the application of such hypothesis as above mentioned are too obvious for comment. The process utterly ignores any attempt to study the local problem.

The second witness offered by the company, dealt with the theory upon which express rates should be constructed, and asserted, as a fundamental proposition, that the express rate should be twice the first-class freight rate, plus the terminal charge. This principle, he insisted, guided the Interstate Commerce Commission in the construction of express rates at the time it promulgated the block system. He then demonstrated that the first-class express rates in Montana failed to sustain, on any thorough going basis, the relation indicated, and this is urged as a reason for allowing the increase sought. If the suggestion is valid it affords independent support for the proposed rates aside from pure considerations of revenue. But we find no basis for the proposition in any decisions of the Interstate Commerce Commission. On the contrary, that body found such a method of rate construction impracticable. In the Commission's leading decision, it is said:

"A reasonable express rate is one which gives reasonable compensation to the rail carrier for carrying a small package upon a passenger train, or a train going at passenger speed, plus a reasonable compensation for the service of gathering,

care, and delivering which the express company as such renders. Manifestly, under this definition, there should be a higher return to the railroad for the carriage of express matter than it receives upon its freight traffic. This should be so because of the superior character of the service given as well as to prevent the movement of ordinary freight upon passenger trains under express rates.

"Can there be a fixed relationship between express and freight rates in the United States? We have sought to discover some such basis, and theoretically it should exist. Owing, however, to the theory or lack of theory upon which freight rates have been made, this is not found to be practicable. In Germany, where freight rates are fixed by the state upon a definite mileage basis, little regard being paid to competitive forces, the eilgut (fast goods) rate, which gives a freight movement upon freight or passenger trains moving at a speed of 28 miles per hour, is twice the first-class freight rate. This, it will be understood, covers only the conveyance charge and does not include the service of gathering or delivering. Moreover, these rates are made upon a minimum weight of 20 kilograms or 44 pounds. The rate is published for 100 kilograms (220 pounds), but a 20-kilogram parcel is charged two-tenths of the 100-kilogram rate. These eilgut rates are open to all forwarders, and in that country, as throughout Europe, independent companies undertake to gather and deliver parcel freight, bulking the same for movement by train and paying this eilgut rate.

"To one familiar with the freight rates of the United States it is apparent that a system of express rates for the United States can not be made with relation to freight rates after the German method. Nevertheless it is necessary that an express rate should not be lower than a normal freight rate, and in the construction of express rates the railroad which furnishes the larger portion of the service which the express company undertakes to give should receive a compensation that will have relation to the charge which it makes for the carriage of freight. With this end in view we have made experiment to discover what, if any, system of rates could be

instituted in any particular section of the country that would have definite relationship to freight charges, and we have discovered that while this would be practicable upon some of the shorter lines of railroad and upon some of the larger systems where rates are made with respect to mileage, no one section of the country could be dealt with upon this principle, and no one express company operating over more than one line of road has made its rates, or could make its rates, upon such basis.

"Perhaps another cogent reason for not adopting this basis is that the forces which go to the making of a freight rate do not in their fullness control the express rate. The two classes of service differ in more respects than in mere speed. The express service is essentially more popular—one which touches directly and intimately everyone, and not merely the manufacturer, the merchant, or the farmer. Express shippers are the unorganized mass of the people who have no means of bringing to bear pressure upon the express companies, excepting in the case of the merchant classes who use such service and who have heretofore generally been accommodated with special rates.

"In searching for the proper relation to be established between express rates and freight rates we have made examination into the freight and express rates established by the various state commissions, and find therein the greatest of variation in the percentage that the express rate is given above the first-class freight rate. For instance, in Georgia a merchandise express rate is fixed for a haul of 100 miles of 70 cents, which is 125 per cent of the first-class freight rate of 56 cents, while in Illinois the express rate is 244 per cent of the first-class freight rate (30.8 cents) for the same distance. In Minnesota the percentage of the express rate over the freight rate for a 100-mile haul is 212 per cent; in Iowa, 313 per cent; in Nebraska, 144 per cent; in Kansas, 250 per cent; and in Texas, 159 per cent.

"This diversity is not remarkable when we consider the absence of relationship between present express rates and the freight rates. We have before us, for instance, a comparison of first-class freight rates with merchandise express rates

out of various cities, and looking over the rates out of Buffalo find that in some instances the express rate is as high as 595 per cent of the first-class freight rate, while to other points in the same general section of destination the percentage over the first-class freight rate runs from 250 to 415 per cent. Out of Chicago the express rates run perhaps more uniformly with relation to freight rates than generally throughout the country, but these variations to typical points of destination stated in percentages run thus: 250, 292, 267, 311, 359, 376, 391, 346, 286, 243, 250, 292, 315, 383, 275, 243, 172; while out of New Orleans the spread between freight and express rates seems to be less uniform and greater on the whole than out of any other city in the country, many of its rates being 600 per cent above the first-class freight rate; some, however, are as low as 151 per cent.

"It may be said roughly that the express rate is generally, when stated on the 100-pound basis, three times as high as the first-class freight rate, although in certain territory, where freight rates are high, express rates are comparatively low, while at other points enjoying low freight rates superinduced by competition of various kinds or by strict regulation, the express rate is on a comparatively high basis. After a close study of freight and express rates it has been quite conclusively established that the latter, as between any two points, can not have any fixed relation to the former, and a scale of rates so made for the United States would be a patchwork of incongruities and unjustifiable discriminations. *

"For these reasons it has not been thought practicable or reasonable to make the express rate a certain percentage of the existing freight rate, although the only guide which the express companies have offered to the Commission as a basis for the making of express rates has been the suggestion that they should be two and one-half or three times the first-class freight rate. * * Under this standard tens of thousands of express rates would be reduced from 50 to 66 2-3 per cent, while an equally large number of present freight rates would be increased in like proportion. It may be said broadly that no express

company in the United States makes its rates upon such basis". **In Re Express Rates, Practices, Accounts, and Revenues**, 24 I. C. C. 380, at 424-426.

*)Underlining ours.

**)

In the interstate advances of 1918 and 1919 the Interstate Commerce Commission departed from such a scheme, if it ever existed, nor do we find any fair recognition of the theory in the 1920 express cases. The record does not disclose that the theory advanced has been perfected to any pronounced degree in any zone, unless it be zone 5 where the witness himself has had direct supervision of the carrier's rate structure. Since the company rests its position on the decision of the Interstate Commerce Commission, and these fail to lend support, we have not deemed it necessary to make original inquiry into the soundness of the theory. What is really sought is uniformity with the result reached by the Interstate Commerce Commission; method is not, alone, important. However, it is plain from an examination of the relation between first-class freight rates and first-class express rates in neighboring jurisdictions that the present Montana express structure more nearly meets the applicant's theory, than the structure in states where the 26 per cent advance is in effect and, from a comparative standpoint sufficiently pronounces the differential which must obtain between freight and express rates, if there is to be express service at all. The present Montana express rates bear an average relation of 209.8 per cent to present Montana freight rates, while in North Dakota, zone 3, where the 26 per cent advance is effective, the average relation is 190.3, and in Washington, zone 5, the average relation is 170.7. The following tables illustrate the relationship for representative distances:

COMPARISON MONTANA FIRST CLASS DISTRIBUTING FREIGHT RATES
WITH PRESENT AND PROPOSED FIRST CLASS EXPRESS RATES.
(Rates are stated in Cents per 100 Pounds.)

Distances (Miles)	1	2	3	4	5	
15	25	77	308.0	97	388.0	
25	34½	93	269.5	110	318.8	
30	37½	93	248.0	110	293.3	
35	40½	110	271.6	139	345.7	
40	44	110	250.0	139	315.9	
50	50	126	252.0	159	318.0	
100	78	154	197.4	193	248.7	
150	97	181	186.6	228	235.0	
200	112½	214	190.2	270	240.0	
250	128	242	189.1	305	238.3	
300	142½	269	188.8	339	238.9	
350	158	297	188.0	374	236.7	
400	172	324	188.4	408	237.2	
450	187½	352	187.7	444	236.8	
500	202	374	185.1	471	233.2	
550	217½	401	184.3	505	232.2	
600	230	429	186.5	541	235.2	
650	245½	451	183.7	568	231.3	
700	256½	473	184.4	596	232.3	
750	272	495	182.0	624	229.4	
800	283	522	184.4	658	232.5	
Average			209.8		262.7	

1. Montana First Class Distributing Freight Rates.
2. Present First Class Express Rates.
3. Percentage Relationship Present Express Rates bear to Freight Rates.
4. Proposed First Class Express Rates.
5. Percentage Relationship Proposed Express Rates bear to Freight Rates.

COMPARISON NORTH DAKOTA AND WASHINGTON FIRST CLASS
FREIGHT RATES WITH FIRST CLASS EXPRESS RATES.
(Rates are stated in Cents per 100 Pounds.)

Distances (Miles)	1	2	3	4	5	6
50	52½	111	211.4	55	111	201.8
100	73	139	190.4	86½	139	160.7
150	90	173	192.2	106½	173	162.4
200	106½	208	195.2	124	208	167.7
250	123½	236	191.1	140½	236	168.0
300	140½	263	187.2	156½	263	168.0
350	157½	291	184.8	174	291	167.2
400	174	325	186.8	189½	325	171.5
450	191	353	184.8	206½	353	170.9
500	208	374	179.8	222	374	168.5
Average			190.3			170.7

1. North Dakota First Class Freight Rates.
2. North Dakota First Class Express Rates. (Includes 26% Increase.)
3. Percentage Relationship Express Rates bear to Freight Rates.
4. Washington First Class Freight Rates.
5. Washington First Class Express Rates. (Includes 26% Increase.)
6. Percentage Relationship Express Rates bear to Freight Rates.

We are forced to conclude that the present intrastate express rate structure is not open to successful challenge because it fails to measure up to a theory rejected by the Interstate Commerce Commission; or, if the theory is sound, because the rates do not adhere thereto with mathe-

matical nicety. As an independent consideration in this case the theory does not seem to have received the sanction of rate authorities, and it certainly can not be said to have commanded that practical and near universal obedience which would put Montana outside the pale.

This witness, too, stressed the burden resulting from the wage award, increased cost of materials, and labor inefficiency, quoting comparative figures for pre-war and post-war periods. He refused to concede that any appreciable slump in express traffic came from the rate increases of 1920, and denied that the experience had since their prescription afforded any inference that rates were tending near or pointed toward the point of prohibiting the free movement of express destined articles, or influencing the current of small packages via the parcels post. The witness drew attention to the fact that up to May, 1921, thirty-six states of the Union had granted the 26 per cent increase (South Dakota with modifications lessening the result), seven the 12 1-2 per cent increase, while five, namely, Montana, Idaho, Utah, Arizona, and Nevada, had declined to grant any increase.

The third witness for the company, intimately acquainted with service conditions in Montana, related the company's difficulties from July 1, 1918, to September 1, 1920, concluding that by reason of shattered organization and industrial demands "we found ourselves during that period about 50 per cent efficient * * * compared to the old days". He found the atmosphere clearing somewhat in September, 1920, judges that an efficiency gain of 25 per cent had been made to about June 1, 1921, and is hopeful of continued improvement. The witness testified that the company maintained about 400 service stations in Montana, of which all but 21 were maintained jointly with the rail carrier. He estimates the offices where a pickup and delivery service is maintained to be about 30 in number. At 19 salaried offices in Montana, it appears there were 217 employes in May, 1919, and 189 employes in May, 1921, and of the latter more on part time, or on a strict hour basis than in 1919.

Failure of Applicant to Meet Jurisdictional Requirements.

The foregoing summarizes, briefly, the applicant's case. Opposed is the testimony of numerous shippers and the traffic officials of several commercial bodies and rate organizations and the illuminative exhibits of Mr. Schaefer. Much of this latter testimony voices the despair of industry, the economic burdens facing the shipper, and the particular plight of our own state where drouth after drouth has defeated the energies of our farmers and where recently

our other principal industry, copper mining with its associated activities, has been rendered inert, its general cessation throwing thousands out of work and seriously weakening our local markets. There is present, of course, the insistence of shippers that increased rates will curtail the company's business to a marked extent, and exhibits are introduced to show that the smaller parcels are going or will go through the postoffice establishment. As we view the record, however, it is not necessary to measure the force of these considerations against the applicant's case, for it is our judgment that the company's case, adding to its direct force every inference born of reason, falls short of the indispensable elements essential to move us to favorable action in its behalf. We do not say that these economic considerations would not prevail against a case **prima facie** perfect, simply that the failure of the applicant to make the **prima facie** objective, dispenses with any necessity for determining the value and weight of the economic factors, after proper paring down for the exaggeration produced by contest.

In our opinion the company must fail of relief on the present record, for its case is built without sufficient recognition of, and adherence to, the limitations of our jurisdiction. Under the statute, Sections 4363-4399, Revised Codes, 1907, we are endowed with power to prescribe reasonable rates on intrastate traffic only, that is, express traffic moving between points in the State of Montana. 4373. The provisions of this act shall apply to the transportation of passengers and property **between points within this state**, and to the receiving, switching, delivering, storing, and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car-companies, sleeping-car companies, freight and freight-line companies, and to any shipments of property **made from any point within this state to any other point within this state**, whether the transportation of the same shall be wholly within this state or partly within this state and partly within an adjoining state or states," etc. Being concerned, then, only with the intrastate services of this carrier, there must, if familiar principles of law count for anything, be submitted to us those elements or proportions of the value of the company's property which are dedicated to intrastate service, and such elements of the rail carriers' property as are allied therewith, the revenues from such service and the expenses of that service. No attempt was made to furnish the first, figures submitted for gross intrastate revenues are not at all representative, and the last item, expenses, was

evolved on assumptions obviously inapplicable to the local situation. There is not a single exhibit offered to reflect intrastate business which includes any twelve months' period. We are not given the total figures for all of the company's business originated in the state, together with the components of its physical plant and the units of its human machine and other details from which we might construct a segregation of the intrastate business. *Inter alia*, these details are material, mileages operated, volume of business, average lengths of haul tonnage originated in Montana and destined interstate and intrastate, and the number and average weights of packages handled interstate and intrastate—and all of them are lacking. While it is undoubtedly true that the company's employees in Montana shared in the labor award, the extent thereof is the subject of estimate as to the number of employees, and the subject of allocation to intrastate business based on "shipment handlings", irrespective of the revenue accruing to the interstate or intrastate business. Perhaps the latter method, results in a fair division of the employees' services, but we are at a loss to understand why the actual payroll figures for the Montana establishment for 1920 and part of 1921, for example, could not be produced, assuming a willingness so to do. In their absence, and in the absence of an exhibition of all the factors whereon the effect of the wage award in Montana was computed, we are in no position to assert that the 13½ per cent increase in rates is reasonable and necessary to meet the local situation. Anyone who is cognizant of the express company's operations realizes that (as we noted above) due to the present construction of its accounts, a strictly accurate reflection of intrastate operations in any state is not to be had, and we may grant that, in any respects, such a division of fiscal operations may never be mathematically possible. But this does not excuse the company from an effort to meet the local requirements of the various states where it is extended the privilege of intrastate business. In this proceeding that effort is not present.

Almost all of the applicant's case rests on the identical showing made to the Interstate Commerce Commission in the successful effort to increase interstate rates; even the brief prepared for that body is here offered as part of the company's case. The company's attitude in the matter of evidence follows the formal allegations of its applications. Paragraph VII of the original application avers "that this Commission (Montana) now has before it, in copies of the petitions filed with the Interstate Commerce Commission and the book of exhibits and the proposed classification

changes, practically all of the evidence that will be submitted in the proceeding before the Interstate Commerce Commission on behalf of the petitioner. And it is believed that this Commission will recognize the impossibility of a separated and localized presentation in each of the forty-eight states". "Wherefore", the prayer concludes, "your petitioner prays that this petition be taken under advisement by this Commission and that if and after new express rates for interstate commerce and changes in the Official Express Classification have been authorized and approved by the Interstate Commerce Commission, that similar or corresponding rates and classification changes be authorized by this Commission to be put into effect upon the same date upon traffic wholly within this state." Paragraph 9 of the amended application is much the same as paragraph VII above, reciting that this board has before it "practically all of the evidence that has been submitted in the proceeding before the Interstate Commerce Commission on behalf of the petitioner," and expressing the belief that we will recognize "the impossibility of a separated and localized presentation in each of the forty-eight states". The prayer asks authority "to file tariffs as soon as possible increasing all of its intrastate rates 26 per cent." Neither application requests a hearing or opportunity to present further proof, neither takes account of our procedural method of rate revision. The very plain implication is, of course, that we are to act on the case made for the federal commission, and the hearing confirmed this fact.

The figures on national deficits are startling, and the magnitude of the increased labor costs for the system as a whole is not short of amazing, but they do not prove or tend to prove that the present Montana rate structure is failing to produce a fair return. The sources of the deficits and the effect of the wage burden should be located with some regard to reality. Montana is as willing to bear its share of the express rate increase, as it is to shoulder its proportion of other incidents of the existent economic state, but assuredly it has a right to expect that its responsibility for a part of the burden will be shown and its share properly determined, particularly, since it is in a zone already bearing the highest rates in the country. A comparison of present first-class express rates in zones 1, 2, and 3, and 5, with proposed and present rates in zone 4 demonstrates that notwithstanding the rate advances in such other zones, Montana's present rates average 1.7 per cent over the present increased rates in zones 3 and 5 to the east and west of us, respectively, 19.1 per cent over the rates in zone 2 and 40.8 per cent over the rates in zone 1, while, if the

existing differential were maintained by force of the increase sought, Montana's proposed rates would average 28.1 per cent over the rates in zones 3 and 5, 49.0 per cent over the rates in zone 2 and 80.3 per cent over the rates in zone 1. Other differences are shown in the table following:

	Cents Per 100 Pounds								Average
	100	200	300	M	I	L	E	S	
Zone 1. Official Territory....									
Present Rate.....	125	159	194	228	256	284	311	333	
Zone 2. Southern Territory....									
Present Rate.....	131	180	228	277	319	360	402	436	
Per cent over Zone 1.....	4.8	13.2	12.4	21.4	24.6	26.7	29.2	30.9	20.4
Zone 3 & 5. Middle West and Pacific Coast.....									
Present Rate.....	139	208	263	325	374	430	478	527	
Per Cent over Zone 2.....	6.1	12.2	15.3	17.3	17.2	19.4	18.9	20.8	15.9
Per Cent over Zone 1.....	11.2	30.8	35.5	42.5	46.1	51.4	53.7	58.2	41.2
Zone 4. Intermountain Territory.....									
Proposed Rate (Mont.)....	194	270	339	408	471	541	596	658	
Per Cent over Zones 3 & 5.....	39.5	29.8	28.9	25.5	25.9	25.8	24.7	24.8	28.1
Per Cent over Zone 2.....	49.6	50.0	48.6	47.3	47.6	50.2	48.2	50.9	49.0
Per Cent over Zone 1.....	55.2	70.0	74.7	78.9	84.0	90.5	91.6	97.6	80.3
Present Rate (Montana).....	154	214	269	324	374	429	473	522	
Per Cent over Zones 3 & 5.....	10.8	2.9	2.3	0	0	0	*1.0	*1.0	1.7
Per Cent over Zone 2.....	17.5	18.9	18.0	17.0	17.2	19.1	17.6	19.7	18.1
Per Cent over Zone 1.....	23.2	34.6	38.6	42.1	46.1	53.1	52.0	56.7	40.8
*Under									

Certainly, this vast disparity in rates demands justification, the exhibition of local conditions proving that the applicant's burden is proportionately higher in our state and zone than in other states in the other zones. But no reason for preserving the distinction is suggested in the record before us. On the other hand, it is manifest that Montana is rapidly reaching that level of population which has always been held out as necessary to rate relief, and constantly diminishing the difference in population which has marked it out from states in zones 3 and 5 in this respect. In the decade from 1910 to 1920 the population per mile of road in Montana increased 23.25 per cent, in Washington (zone 5) 2.19 per cent, in South Dakota .003 per cent, while in North Dakota a decrease of 13.25 per cent was recorded. The table next appearing indicates the progressive increase.

PER MILE OF ROAD 1920 OVER 1910

STATE	Mileage Operated 12-31-19.....	Population Census 1920.....	Population Per Mile of Road.....	Mileage Operated 6-30-10.....	Population Census 1910.....	Population Per Mile of Road.....	Per Cent of Increase.....
Montana	4,921.58	548,889	111.54	4,155.42	376,053	90.50	23.25
Washington	6,292.44	1,356,621	215.60	5,412.82	141,990	210.98	2.19
No. Dakota.....	5,250.08	645,680	122.98	4,070.37	577,056	141.77	13.25d
So. Dakota.....	4,288.03	636,547	148.45	3,921.17	583,888	148.91	.003
d-Decrease							

In this connection it is to be remembered that the operations of the Great Northern and Northern express companies in Montana show a profit from 1914 to 1917 with a deficit for the first six months of 1918 only 1 per cent of the total for the seven old companies. 58 I.C.C. 281, 290.

Frankly, if the case made before the Interstate Commerce Commission must suffice for this Board, there would not seem to be any reason for coming here. It is our conviction, however, that the Transportation Act of 1920 does not dispense with state sovereignty so easily. Its terms disclaim any attempt to displace the settled conceptions. On principle, it seems incredible that the new act could in any wise disturb the long line of decisions grounded on the provisions of the Federal constitution which hold that calculations as to what shall constitute a reasonable rate of return from property devoted to internal commerce shall be made without regard to the returns from interstate commerce. In *Smyth v. Ames*, 169 U. S. 466, 541, it was specifically ruled:

“Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business.”

That the principle then declared is fully operative today appears in these cases:

“Minnesota Rate Cases; 230 U. S. 352.

Chicago, etc. R. Co. v. Dey, 35 Fed. 865, 1 L.R.A. 744.

Northern Pac. R. Co. v. Keys, 91 Fed. 47.

Seaboard Air Line R. Co. v. Alabama R. Comm., 155 Fed. 792.

In re Arkansas R. Rates, 163 Fed. 141.

St. Louis, etc. R. Co., v. Hadley, 168, Fed. 317.

Missouri, etc. R. Co. v. Love, 177 Fed. 493.

Western R. of Alabama v. Alabama R. Comm., 197 Fed. 954.

State v. Atlantic Coast Line R. Co., 48 Fla. 147, 37 So. 657, affirmed 203 U. S. 256, 7 S. Ct. 108, 51 U.S. (L. ed.) 174.

Nor. Pac. Ry. Co. N.D., 236 U.S. 585, 600, 601, Ann. Cas. 1916-A, 1.

Norfolk, etc. Ry. Co. v. Conley, 236 U.S. 605, 612. Manufacturer's Light, etc. Co. v. Ott, 215 Fed. 940, 951.

Trust Co. of Amer. v. Chicago, etc. Ry. Co. 199 Fed. 393, 601, 605.

Louisville, etc. R. Co. v. Railroad Commission, 196 Fed. 800, 817, 823, 824.

In re Arkansas Rate Cases, 187 Fed. 290, 320.

Northern Pacific Railway Co. v. N.D., 236, U.S. 585, at 598, contains an application of the same principle in these words:

“Certainly it could not be said that the carrier may be required to charge excessive rates to some in order that others might be served at a rate unreasonably low. That would be but arbitrary action.”

Norfolk & West. Ry. v. West. Va., 236 U.S. 605, at 612.

In this connection it is to be observed that the state commissions did not have any representatives sitting with the Interstate Commerce Commission in the express case, the proceeding being distinguished from the freight case in this respect (In re Freight Rate Advance, 13 M. U. R. 63). Moreover, so far as our research extends we do not find that the Interstate Commerce Commission has constructed express rates with regard to the property devoted to the express service, and until it does the decisions of the Supreme Court of the United States and the provisions of the Transportation Act have not been satisfied.

Our expressions to this point suffice to indicate the reasons for the order following. It should be noticed, however, that the United States Railroad Labor Board by decision No. 217, of July 11, 1921, reduced the wages of those employes of the company who enjoyed increases by virtue of that board's decision No. 3, August 10, 1920, approximately 37½% of the 1920 increase, that is, where wages were increased in the sum of 16 cents per hour in

1920, a deduction of 6 cents per hour is effective from and after August 1, 1921. This action alone materially diminishes the necessity for the 13½ per cent increase of September 21, 1920, authorized to meet the labor award. Bearing in mind that the losses due to the inefficiency of war labor, (the company's organization in this state being only 50 per cent efficient during the period July 1, 1918 to September 1, 1920) are rapidly being corrected, half of the deficiencies in the Montana establishment having been wiped out by June 1, 1921, and that very marked reductions are being made in loss and damage claims, the percentage of the latter to total transportation charges having been reduced from approximately 12½ per cent in 1918 to 7 per cent in 1919 for the system as a whole, and the progression of reduction continuing, in which Montana shares, it would seem that the time had now arrived for the company voluntarily to forgo at least part of the 13½ per cent interstate increase of September 21, 1920.

The application to modify and amend the express classification is predicated upon an advanced rate structure, and in its most important particulars is inextricably interwoven therewith. This being true, we decline to disturb the existing classification. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol, at Helena, Montana, on the 1st day of August, 1921, commencing at 10 o'clock a.m., present Chairman Dennis, and Commissioners Boyle and Ross, in the matter of the application of the American Railway Express Company for an order of this Board advancing intrastate express rates 26 per centum, and for an order of this Board authorizing amendments of and alterations in the existing express classification, these matters being before the Board upon the application of said company filed on the 21st day of June, 1920, and the amended application of said company filed on the 5th day of November, 1920, and protests against the same, and a full investigation of the matters and things involved having been had, including public hearing under the above docket number, and the Board having on the date hereof made and filed of record a report containing its findings and conclusions therein, which said report is hereby approved and made a part hereof, and now the Board being fully advised in the premises:

IT IS THEREFORE ORDERED That the application of the American Railway Express Company, as formulated in its original and amended applications herein, be and the

same is hereby denied, and all and singular the requests contained in the prayers thereof, be and the same are hereby denied.

IT IS FURTHER ORDERED That the Secretary shall serve by mail a certified copy of this Report and Order upon each of the parties hereto, and that the same shall be in full force and effect forthwith.

Investigation and Suspension Docket
IN RE INDUSTRIAL SPURS AND SIDE TRACKS.

(March 1921. Hearing April 12, 1921.)

(Item I. & S. B-5. Decided October 1, 1921.)

Industrial Spurs—Commercial Spurs—Loading Tracks—Jurisdiction.

The question of the jurisdiction of the Board of Railroad Commissioners of Montana in the matter of the construction, maintenance and operation of industrial spurs, etc., examined. Said Board held, to have authority to require of the rail carriers (a) the construction or (and) extension, maintenance and operation of public loading or (and) unloading tracks at stations, and, (b) the construction or (and) extension, maintenance and operation of commercial or industrial spurs, provided the same will be public in character, at stations or from within station limits when the length of such spurs shall not exceed two miles from the headlock to the end of track.

Inquiry into the practices, rules, conditions and contracts followed, enforced and negotiated by all carriers operating within the State of Montana, in the matter of the construction, installation and operation of spur tracks, industrial or commercial spurs and sidetracks and switches therefore, with a view to the prescription of such rules and regulations as the statutes authorized this Board to promulgate. Certain uniform rules prescribed for procedure, in cases of public spurs, etc., at stations or from within station limits.

Appearances: Gunn, Rasch & Hall by M. S. Gunn, J. E. Craver, G. H. Jacobus, F. R. Bartles and Louis Yager for the Northern Pacific Ry. Co; I. Parker Veazey, Jr., W. R. Smith, for the Great Northern Ry. Co.; Murphy & Whitlock by Mr. W. L. Murphy, and E. H. Barrett for the Chicago, Milwaukee & St. Paul Ry. Co.; Gunn, Rasch & Hall by Mr. M. S. Gunn, A. G. Smart and E. M. Westervelt for the Chicago, Burlington & Quincy R. R. Co.; J. E. Corette, J. T. Hammond, Jr., and J. H. Loofbouroow for the Oregon Short Line R. R. Co.; A. C. Erdall for the Minneapolis, St. Paul & Sault Ste. Marie Ry. Co.; W. H. Bunney for the Montana, Wyoming & Southern R. R. Co.; A. J. Nicholson for the White Sulphur Springs & Yellow-

stone Park Ry. Co.; C. F. Murphy for the Butte, Anaconda & Pacific Ry. Co.; Gunn, Rasch & Hall by Mr. M. S. Gunn, for the White Sulphur Springs & Yellowstone Park Ry. Co. and for the Gilmore & Pittsburgh R. R. Co., Ltd.; E. G. Toomey, Counsel, for the Board; Nelson Story, Jr., for various shippers.

Before: The Board, *en banc*, in Helena.

By the Board: On March 15, 1921, in consequence of numerous complaints by shippers alleging unfair practices and exactions on the part of the carriers in the matter of the construction, installation and operation of industrial and commercial spurs, sidetracks and switches therefor, and, further, as a result of the seeming diversity of practice among the carriers in respect thereto, and the cloudy condition of the statutory law on the questions involved, the Board ordered a general hearing on the matter, specifically directing inquiry into these features of the subject for the purpose of indicating the latitude of the inquiry:

(a) The standard contracts and agreements now prescribed by the carriers, for such facilities, together with the variations of same, and whether any contracts executed subsequently to 1907 may be modified, altered or abrogated by regulations of this Board, inconsistent therewith.

(b) The terms and conditions of payment for construction, maintenance, and operation, and the terms and conditions of ownership, of said facilities, and the real estate in connection therewith.

(c) When such facilities are private and when public.

(d) The right of the public generally, or any person other than the original applicant for such facilities to the use of the same, and the terms and conditions of the use thereof.

(e) The effect of pertinent federal law or rules on the authority of this Board in the premises.

And any other matter essential to a complete understanding of the subject and the right of the carriers, shippers and the public, with a view to formulating such general rules on the subject as are consistent with law.

At the hearing on April 12, 1921, all the principal carriers were represented by counsel and operating officials, and most of the smaller carriers were likewise represented. Many shippers have appeared at various times in the course of the inquiry. The subject-matter was thoroughly covered thereat and all relevant facts

were exposed. Since that time the Board has had the advantage of counsels' briefs filed after full opportunity for careful study of the problems involved. We notice the principal questions raised in the order that they were suggested by the parties in interest.

Jurisdiction of the State.

Assuming, for the purpose of this question, that the State of Montana has endowed this Board, as its administrative agent, with authority to regulate, in some measure, the construction, maintenance and operation of industrial and commercial spur tracks, etc., is such action on the part of the state (a) unauthorized, in any event, or (b) now in conflict with the exertion of superior federal power? Obviously this question must be first met, for if there is no jurisdiction in the state, the Board cannot move forward to any objective herein. The vigor with which the federal government is not only occupying every corner and recess of the field of interstate commerce, as it lawfully may, but moving forward to draw under its mantle those subjects which fall in the shadow of that mantle, or possibly beyond. (*Beall v. Wheeling Traction Company*, 60 I. C. C. 600, 63 I. C. C. 220), provokes an inquiry as to what the federal government has done, in almost every instance where the Board assumes to touch upon the activities of the carriers. *Prima facie* the construction, maintenance and operation of spur tracks, depending essentially on the application of special measures to meet various and particular local conditions, would not seem to come within those decisions of the Supreme Court of the United States holding that in some cases—where the subject is national in character—uniformity of regulation is essential and in those cases Congress alone may legislate. Uniformity of regulation from Washington in these matters—indisputably of local concern—not only seems non-essential, but in many instances impossible, and hence the doctrine that the state may legislate in the absence of conflicting federal legislation would seem to apply. (*Robbins v. Shelby Taxing Dist.* (1887) 120 U. S. 489, 492, 7 Sup. Ct. 592, 593, 30 L. ed. 694; *Atlantic & P. T. Co. v. Philadelphia* (1903), 190 U. S. 160, 162, 23 Sup. Ct. 817, 47 L. ed. 995; *Minnesota Rate Cases* (1913) 230 U. S. 352, 33 Sup. Ct. 729, 57 L. ed. 1511; *Western U. T. Co. v. Kansas* (1910), 216 U. S. 1, 26, 27, 30 Sup. Ct. 190, 197, 54 L. ed. 355; *Missouri P. Ry. Co. v. Larabee F. M. Co.* (1909), 211 U. S. 612, 621, 29 Sup. Ct. 214, 217, 53 L. ed. 352; *Olsen v. Smith* (1904), 195 U. S. 332, 341, 25 Sup. Ct. 52, 53, 49 L. ed. 224; *Leisy v. Hardin* (1890), 135 U. S. 100, 109, 119, 10 Sup. Ct. 681, 684, 688,

34 L. ed. 128; *Pound v. Turck* (1877), 95 U. S. 459, 24 L. ed. 525; *West v. Kansas N. G. Co.* (1911), 221 U. S. 229, 261, 31 Sup. Ct. 564, 573, 55 L. ed. 716). We do not understand the carriers to contend that the subject here involved is, constitutionally, of nationalistic concept. Counsel, however, assert that the construction, maintenance and operation of industrial and commercial spurs is a subject of interstate commerce, which the Congress may regulate when it pleaseth and that, by the Interstate Commerce Act as amended, Congress has prescribed that conflicting legislation which puts an end to present, and as long as that Act or other similar provisions stand, further effort by the states in the premises.

Moving forward on the assumption that the Congress may seize upon the subject, to exert its constitutional power, (but by no means so conceding), let us look at the statutes alleged to dominate. Subdivision (9) of Section 1 of the Interstate Commerce Act, as adopted June 29, 1906, provides:

“Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a **switch connection** with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral branch line of railroad may make complaint to the Commission, as provided in Section Thirteen of this Act, and the Commission shall hear and investigate the same, and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in Section Fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall

be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money."

Notwithstanding that this subdivision of Section 1 has been on the books for over fifteen years, the instant proceeding marks the first time we have heard it suggested that it operated to exclude the states from jurisdiction over the facilities here involved, The Interstate Commerce Commission on June 22, 1909, and again on February 5, 1912, concluded that Subdivision 9 clothed it with power only to order a carrier "to make a 'switch connection' with a private side track", and did not extend to the construction, operation and maintenance of private side tracks, etc. *Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co.*, 16 I. C. C. 587; *Ralston Townsite Co. v. M. P. Ry. Co.*, 22 I. C. C. 354. The direct inference from these decisions (which do not appear to have been the subject of judicial challenge), as far as the present case goes, is that Congress has not occupied the field. As if to remove any doubt about its own action in the premises, Congress, in its amendment of Section 1 of the Interstate Commerce Act by section 402 of the transportation act, 1920, wherein it was dealing with the extension and abandonment of the lines of common carriers and the authority of the federal commission to order the carrier to provide safe and adequate facilities for performing as a common carrier its duty in the matter of car service, and the extension of its lines, included this specific reservation, now found as Subdivision (22) of Section 1 of the Interstate Commerce Act:

"The authority of the Commission conferred by Paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation".

In the face of the fact that Congress was legislating on Section 1 of the Act, with knowledge of the construction its administrative agent had placed on Subdivision (9) thereof, it is difficult to believe, even without the Commission's decisions, that one subdivision of such section (adopted in 1906) specifically authorizes what a latter subdivision (adopted in 1920) of the same section specifically forbids.

While the prohibition of subdivision (22) goes only to "the authority of the Commission conferred by Paragraphs (18) to (21) both inclusive", and thereby it may be

argued that there is no conflict between Subdivisions (9) and (22), the better view is that Congress realized that the language in Subdivisions (18) to (21) inclusive, if not expressly excepted to, was broad enough to confer on the Commission the very powers which Subdivision (9) failed to confer, and hence it proceeded to make sure that such construction would not be extended to the amendments. If the Commission already enjoyed, under Subdivision (9) what was forbidden by Subdivision (22) there would have to be a careful saving of the former power, for Subdivision (9) is in substance, if not in name, a proceeding for a certificate or order on the ground of public or private necessity and convenience. The error in respondents' position is in the extension of the terms "switch connection", found in Subdivision (9), to every line or piece of track that may hang thereon—the error of the layman who spreads the term "switch" to every piece of track reached by means of such mechanism. The position we take, if not the reasoning, is supported by the decision of the Interstate Commerce Commission in *National Industrial Traffic League v. Aberdeen & Rockfish R. R. Co., et al.*, March 15, 1921, 61 I. C. C. 120. Commenting on Subdivision (9) of Section 1 of the Act, the Commission says:

"This language clearly refers to the construction, maintenance, and operation of switch connections. We have held that under its provisions we have no authority to require a railroad to construct a private side track, and that our authority is limited to requiring a carrier to make a switch connection with a private side track. *Winters Metallic Paint Co. v. C. M. & St. P. Ry Co.*, 16 I. C. C. 587. Complainant refers to our report in *Imperial Wheel Co. v. St. L., I. M. & S. Ry. Co.*, 20 I. C. C. 26, and alleges that we there took jurisdiction of a similar question. We there said:

'We are therefore left to consider the single question whether a carrier, as a condition precedent to its undertaking to make a switch connection and to operate a spur track leading to an industry, may require the industry to indemnify it from liability and claim for loss and damage by fire caused by the sparks or burning coals from its locomotive on the spur track.'

We found that the conditions respecting its liability for fire on the premises of the complainant, which defendant insisted upon, did not seem un-

reasonable, and dismissed the complaint. However, in that case the question of jurisdiction was not specifically raised. And subsequently in *Ralston Townsite Co. v. M. P. Ry. Co.*, 22 I. C. C. 354, we declined to take jurisdiction to enforce the performance of a side track agreement. It was there pointed out that complainant failed to distinguish between the physical characteristics of a switch connection, which we can require in a proper case under authority conferred by Section 1, and a private side track, which we cannot require a carrier to construct.

"It is therefore apparant that we had no jurisdiction under Section 1 of the Act to Regulate Commerce to require the construction, maintenance, and operation of private side tracks. Nor does it appear that the Act as amended by the Transportation Act, 1920, enlarges our powers in that respect. While Paragraphs (18) to (21), inclusive, of Section 1 of the Interstate Commerce Act contain provisions for the extension or abandonment of the lines of common carriers by railroad upon authority from us and empower us under the conditions therein set forth to require any common carrier by railroad subject to the Act, after hearing, in a proceeding upon complaint or upon our own initiative without complaint, 'to provide itself with safe and adequate facilities for performing as a common carrier car service as that term is used in this Act, and to extend its line or lines', Paragraph (22) thereof specifically provides that:

"The authority of the Commission conferred by Paragraphs (18) to (21), both inclusive, shall not extend to the constructive or abandonment of spur, industrial, team, switching, or side tracks, located or to be located wholly within one state, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.'

"From this it is clear that industrial side tracks, located or to be located wholly within one state, are excluded from the provisions of Paragraphs (18) to (21), inclusive, of Section 1 of the Act."

We conclude that the state is free to act in the premises as far as the federal Congress is concerned. Any spur track, etc., ordered to be constructed by the authority of the state must, of course, lie wholly within the state.

Action by the State.

Section 5, Article XV, of the constitution of Montana, provides:

"All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers and subject to legislative control, and the legislative assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the state. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state and to connect at the state line with railroads of other states and territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad".

Section 7, Article XV, of the constitution of Montana, provides:

"All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad, or transportation, or express company, between persons or places within this state; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employe thereof,

shall give any preference to any individual, association or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter”.

Section 9, Article XV, of the constitution of Montana, provides:

“The right of eminent domain shall never be abridged, nor so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the police powers of the state shall never be abridged, or so construed, as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.”

Sections 4343 and 4344, Revised Codes, Montana, 1907, (Ch. 26 Laws, 1905), provide:

“4343. Duty to furnish shipping facilities. It is hereby made the duty of every person, corporation and association operating a railroad in the State of Montana to maintain facilities for shipment and delivery of freight, and to ship and deliver freight and accomodate passengers at any point upon the line of such railway where there is a platted townsite of record having not less than one hundred inhabitants.” **4344. Penalty Period.** Any such person, corporation or association which shall within sixty days after written request of not less than fifty inhabitants of such platted townsite fail to comply with the provisions of this Act, shall upon conviction be fined not less than ten dollars nor more than one hundred dollars for each day thereafter, so long as the provisions of this Act are not complied with.”

Section 4378, Revised Codes, 1907, being Section 16 of Ch. 37, Laws of 1907, the act creating the Board of Railroad Commissioners, provides in part as follows:

“The Board shall have the general supervision of all railroads, express companies, car companies, sleeping car companies, freight and freight line companies, and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said Board and within its power and authority under the provisions of Act; and shall investigate

any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein or by the officers, agents, or employes thereof."

If the language in Sections 4343 and 4344 can be said to embrace the construction of industrial spurs, side tracks, etc., and if the last quotation from the Railroad Commission Act can by any stretch of imagination be construed to draw to the Board the right to enforce, *in limine*, Sections 4343 and 4344, Revised Codes, *supra*, there may be some ground for the argument that as a part of its general power, under the Railroad Commission act, to require carriers to furnish reasonable service, the Board may order the construction of spur tracks, etc. But we prefer to look elsewhere for our authority, convinced that the possibilities suggested are too remote to afford any real power in the premises. Indeed, the argument would not be noted now save that it has frequently appeared in the past, and should, to avoid false hopes, be put out of view. Section 4343 is intended to cover the installation of more or less complete station facilities, including buildings as well as tracks.

The appearance, subsequently to 1907, of specific statutes dealing or attempting to deal with the subject in precise terms, strengthens the conclusion that the legislature had not, by the general act of 1907, or earlier acts now found in the Revised Codes of that year, directly dealt with the subject of industrial spurs, side tracks, etc. We notice these statutes in the order of their appearance:

Chapter 136, Laws of 1909, entitled "An act to regulate common carriers, and to provide for certain appliances, rules and regulations looking to the safety of the traveling public and employes upon railway trains, and to confer upon the Railroad Commission of Montana certain powers in relation thereto", provides by Section IV thereof:

"The Railroad Commission of the State of Montana shall have full power and authority to, after notice and hearing, compel railroad companies operating in the State of Montana to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities, provided, however, that any such industrial or commercial spur will not exceed one mile in length from head-block to end of track, and shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs, and provided further, that such industrial or commercial spur shall not

be ordered constructed except within the limits of extreme switches of stations or yards, or at sidings unless such station, yards, sidings or spurs are more than seven miles apart, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main line operation”.

Counsel for the Great Northern alleges Section IV to be violative of Section 23 of Article V of the state constitution which declares that:

“No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed”.

Counsel for the Northern Pacific do not, in their brief, thus assail the act, nor did they (and we accordingly did not advert to it) in *J. Henry Nibbe v. Northern Pacific Ry. Co.*, et. al., 13 M. U. R. 20, P. U. R. 1920-B 173, or *J. Henry Nibbe, et al., v. Northern Pacific Ry. Co.*, 14 M. U.R. , and we do not find counsel for the Milwaukee suggesting such defect. Notwithstanding our reluctance to enter upon constitutional questions, as members of this Board we are, however, bound by our several oaths to uphold the constitution, the provisions of which in this instance are “mandatory and prohibitory” (Art. III, Sec. 29), and as such conceive it our duty to notice the objection. If these oaths are to be honored, we should not forsake them merely because we are not a court. There are no express words in the title of the act on the subject of industrial or commercial spurs, or any words beyond the phrase “to regulate common carriers”, which suggest to the mind of the reader the possibility that the body of the act may contain legislation on the subject. If we look at the phrase “to regulate common carriers” alone and apart from the rest of the title, for example,

“An Act to Regulate Common Carriers”

we are left to speculate whether the common carriers referred to are rail, water or wire carriers, and if the former, as to what species of regulation is attempted, whether the regulation of intercorporate relations, the regulation of rates, the regulation of railroad accidents, or any of the other thousands of items of railroad activity which the

public has seen fit to regulate. Of course, the phrase "an act to regulate common carriers", taken literally, is so broad that the reader may place thereunder any species of common carrier and any subject of regulation that his fancy conjures up. But the mandate of the constitution is that the subject "shall be clearly expressed in its title", not left to surmise, and when we remember that the purpose of the constitutional provision "is to advise members of the legislature of the character of proposed legislation, and prevent the enactment of laws surreptitiously" (*State v. McKinney*, 29 Mont. 380, 74 Pac. 1096) it is clear that the phrase "to regulate common carriers" is insufficient, for it fails to advise the legislators of any single subject. It is impossible to guess from the phrase what subject is touched upon in the act. Under the phrase, the legislator who relied on the title might have voted for a standard passenger fare of five cents per mile. It is plain, we think, that the phrase must be read in connection with the rest of the title from which it is separated by only a comma and joined by the conjunction "and". When this is done there is no word or phrase which Section IV can be said to hang upon, either directly or indirectly. Spur tracks to industries are not related, as subjects of legislation, to "certain appliances, rules and regulations looking to the safety of the travelling public and employes upon railway trains", and the powers conferred upon this Board are by the words of the statute "in relation thereto", i. e., to certain appliances, etc. We cannot escape the conviction that Ch. 136, Laws of 1909, was enacted primarily to furnish the state with a system complementary to the Federal Safety Appliance Acts and the regulations of the Interstate Commerce Commission thereunder and that Section IV of Ch. 136 is an afterthought as far as the title of the act is concerned. In obedience to our oaths, we must ignore the section as foreign to the purpose of the act and therefore violative of Section 23, Article V of the state constitution. See *State v. Brown*, 29 Mont. 179; *State v. McKinney*, 29 Mont. 375; *Yegen v. Board of County Commissioners*, 34 Mont. 791.

The next act on the subject, in point of time, is Chapter 43, Laws of 1913, entitled, "An act providing a summary method for procuring the right to erect a grain warehouse or grain elevator on railroad rights of way". Section 7 thereof provides:

"Every railroad company or corporation organized under the laws of the state, or doing business therein, shall, upon application in writing provide reasonable side track facilities and running connections between its main track and elevators and

warehouses upon or contiguous to its right of way at stations; and every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its sidetracks to and from any warehouses or elevator without reference to its size, cost or capacity, where grain is or may be stored; provided, that such railroad company shall not be required to construct or furnish any sidetracks except upon its own land or right of way; provided, the reasonable cost of the construction of such sidetracks and connections, except the cost of the rails and fastenings, shall be paid by the person or persons for whose benefit such sidetracks are provided or connections made; provided, further, that such elevators and warehouses shall not be constructed within one hundred feet of any existing structure, and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart, the railroad company, when required so to do by the Board of Railroad Commissioners of the State of Montana, shall construct and maintain a sidetrack for the use of shippers between such stations".

Counsel for the Northern Pacific make the same objection to Section 7 of this Act as counsel for the Great Northern made to Section IV of Chapter 136, Laws of 1909, *supra*. We have given this objection careful consideration but we are unable to reach the same result as above with respect to the entire section, for, to our mind, the duty of railroads to connect warehouses and elevators by running connections and sidetrack facilities cannot be said to be **foreign** to an act which has for its purpose the procurement of "the right to erect a grain warehouse or grain elevator on railroad rights of way". Without the sidetracks and running connections there would be little or no purpose in the erection of such structures on the rail carrier's right of way. All but the last clause of Section 7 of the act treat indirectly, at least, of a subject mentioned in the title (State v. McKinney, *supra*) for practical men will not think of elevators on railway rights of way without the tracks connecting same to the main line. One of the principal purposes of building elevators is to load, conveniently, into freight cars. We think it clear that there is some intimation of rail connections to the structures which the title mentions when the subject of the erection of such structures on railroad rights of way is considered in the

light of the familiar presumption of constitutional law that must attend Section 7. Counsel further asserts "that part of the act relating to the construction of grain warehouses and grain elevators on the right of way of a railroad authorizes the taking of private property for private use, in violation of both the constitution of the state and the constitution of the United States", citing **Missouri P. R. Co. v. Nebraska**, 164 U. S. 403. In the case cited, the court said:

"The order in question was not limited to temporary use of tracks, nor to the conduct of the business of the railway company. But it required the railway company to grant to the petitioners the right to build and maintain a permanent structure upon its right of way.

"The order in question was not, and was not claimed to be, either in the opinion of the court below, or in the argument for the defendant in error in this court, a taking of private property for a public use under the right of eminent domain. The petitioners were merely private individuals, voluntarily associated together for their own benefit. They do not appear to have been incorporated by the State for any public purpose whatever; or to have themselves intended to establish an elevator for the use of the public. On the contrary, their own application to the railroad company, as recited in their complaint to the board of transportation, was only, 'for a location on the right of way at Elmwood Station aforesaid, for the erection of an elevator of sufficient capacity to store from time to time the cereal products of the farms and leasehold of complainants aforesaid, as well as the products of other neighboring farms'.

"To require the railroad company to grant to the petitioners a location on its right of way, for the erection of an elevator for the specified purpose of storing from time to time the grain of the petitioners and of neighboring farmers, is to compel the railroad company, against its will, to transfer an estate in part of the land which it owns and holds, under its charter, as its private property and for a public use, to an association of private individuals, for the purpose of erecting and maintaining a building thereon for storing grain for their own benefit, without reserving any control of the use of such land, or of the building to be erected thereon, to the railroad company for the

accommodation of its own business, or for the convenience of the public.

"This court, confining itself to what is necessary for the decision of the case before it, is unanimously of opinion, that the order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioners, for the purpose of building and maintaining their elevator upon it, was, in essence and effect, a taking of private property of the railroad corporation, for the private use of the petitioners. The taking by a State of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amendment of the Constitution of the United States. *Wilkinson v. Leland*, 2 Pet. 627, 658; *Murray v. Hoboken Co.*, 18 How. 272, 276; *Loan Association v. Topeka*, 20 Wall. 655; *Davidson v. New Orleans*, 96 U. S. 97, 102; *Cole v. LaGrange*, 113 U. S. 1; *Fallbrook District v. Bradley*, ante, 112, 158, 161; *State v. Chicago, Milwaukee & St. Paul Railway*, 36 Minnesota 402".

Missouri Pacific Ry. v. Nebraska, 164 U. S. 403, 416.

It is plain from the court's language, and pointedly emphasized, that the vice of the order of the board of transportation in that case lay in the fact that the elevator was a **private elevator** for a **private use**, whereas Chapter 43 supra, grants the privilege only to a person, firm or corporation desirous of erecting and operating "a warehouse or elevator for the purchase, sale, shipment or storage of grain (including flax seed) **for the public for hire.**" (Section 1, and see Section 5.) Coupled with the provisions for insuring adequate compensation for this public use, public hearing, and so forth, that part of the statute relating to the construction of warehouses, etc., is clearly valid and free from the defects counsel supposes. It is further objected, however, that "section 7 is also within the criticism and condemnation of a statute of Nebraska, held unconstitutional in the case of *Missouri P. R. Co. v. Nebraska*, 217 U. S. 196." The Nebraska statute (Session Laws of 1905, C. 105, Sec. 1, 6) under consideration in that case was most sweeping. As the court said: "On the face of it the statute seems to require the railroad to pay for sidetracks whether reasonable or not—or, if another form of expression be preferred, to declare that a demand for a sidetrack to an elevator anywhere is reasonable, and that the railroads must pay.

Clearly no such obligation is incident to their public duty, and to impose it goes beyond the limit of the police power". But Section 7 qualifies the facilities to be provided by the terms (a) "reasonable", and (b) "in a reasonable manner", and provides that the carrier shall not be required to construct any sidetracks (c) "except upon its own land or right of way", and then only when (d) "the reasonable cost of the construction (except the rails and fastenings) shall be paid" by the applicants, whose elevator (e) "shall not be constructed within one hundred feet of any existing structure", and (f) "shall be at safe fire distance from the station buildings", and (g) "so as not essentially to conflict with the safe and convenient operation of the road." These qualifications shrink the statutory demands to such as are reasonable, and when it is remembered that the elevators and warehouses to which the connections are to be afforded **at stations** must be for a public use (for we think the appropriate clauses of Section 7 as an integral part of Chapter 43 must be taken as referring only "to public elevators and public warehouses . . . subject to legislative control") the only remaining objection to Section 7 in the light of 164 U. S. 403 and 217 U. S. 196, is that it fails to provide for a hearing in advance to decide whether the demand is within the statute. No hearing before this Board, or a district court, is expressly provided for in the matter of track connections to public elevators and warehouses at stations. This condition would we think, vitiate that part of the section now under consideration were it not for the fact that no penalty is prescribed for the carriers' failure or refusal to yield to the applicant's demand. So far as the section goes, the carriers may, with impunity, refuse to make the connections sought, and do not, to quote Mr. Justice Holmes, in the case cited, "refrain from paying (for rail and fastenings) at the peril of a fine, if they turn out wrong in their guess that in the particular case, the court will hold the demand not authorized by the act." Thus that part of Section 7, referring to track connections for public elevators or warehouses at stations as we view it, is free from the objections counsel urges against it. However, it makes little difference we think, whether that part of Section 7, referring to track connection at stations, is invalid, for the subject matter thereof is sufficiently covered by Chapter 135, Laws of 1917, *infra*. We have noticed the provisions of Chapter 43, Laws of 1913, at more length than necessity requires (if our general supervisory power is left out of view for the present), for there is but one reference to this Board in the whole act, namely, the concluding clause of Section 7, *viz.*, "and where stations are ten

miles or more apart, the railroad company, when required so to do by the Board of Railroad Commissioners of the State of Montana shall construct and maintain a sidetrack **for the use of shippers between such stations.**" There is no intimation in the title of the act, viz; "An act providing a summary method for procuring the right to erect a grain warehouse or grain elevator on railroad rights of way", that "where stations are ten miles or more apart, the railroad company, when required to do so by the Board of Railroad Commissioners of the State of Montana shall construct and maintain a sidetrack for the use of shippers between such stations." This last specific grant of power is intended to provide facilities for shippers between stations and apparently where there are no elevators, warehouses, etc., it being recognized that a ten mile interval does not reasonably serve traffic. This clause aimed to give shippers a sidetrack on one condition only, namely; while a ten mile interval occurred between stations. There is no requirement that there be any elevators in such ten mile interval, and it seems clear that such a proviso was purposely left out, for if the legislature had intended to prescribe the existence of an elevator as necessary it would have said so as in the case of stations. If this is true, the clause violates Sec. 23 of Article V of the State Constitution, for the title of the Act makes it necessary that every clause therein relate directly or indirectly to grain elevators or grain warehouses. Only by construing this authority to a situation where there is an **elevator or warehouse** between stations ten or more miles apart, can it be kept within the title to the act. Such a construction, we think unnatural, and we decline to follow it.

The next statute touching the subject here involved is Chapter 105, Laws of 1913. Section 3 thereof is material here as follows:

"The Board of Railroad Commissioners of the State of Montana shall have full power and authority after notice and hearing, to compel railroads, railways, or common carriers operating within the State of Montana, to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stock yards, stock chutes, or stock pens, whenever the necessity therefor has been established to the satisfaction of the Commission."

This section is not assailed for invalidity on any ground by any of the counsel appearing, and we think it

free from any defects. It is clear that the loading or unloading tracks we may order installed, at stations, are public tracks only. Where spurs are desired at points other than stations (and the word should include station or yard limits or municipal limits) some authority other than this section must be found for any order on our part.

The last legislative enactment touching the subject of industrial and commercial spurs is found as Chapter 135, Laws of 1917, which we quote in full:

"An act to provide for the construction of commercial or industrial spurs from railroads, and to give the Board of Railroad Commissioners of the State of Montana power and authority with reference thereto.

"Section 1. The Board of Railroad Commissioners of The State of Montana shall have power and authority to, after such investigation as they may deem necessary, and under such rules and regulations as they may establish with reference thereto, compel railroads or railways or other companies or corporations operating or holding themselves out to be common carriers in the State of Montana, to extend or construct commercial or industrial spurs from constructed lines or tracks at stations or from within station limits; provided, the length of such commercial or industrial spurs or tracks shall be not to exceed two miles from the headblock to end of track.

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

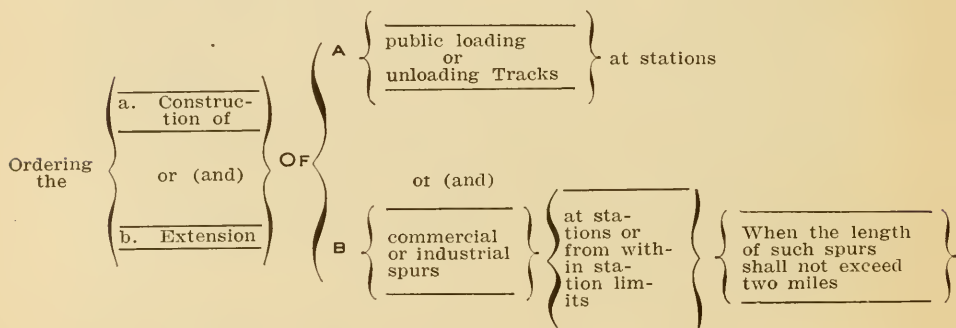
"Section 3. This act shall be in full force and effect from and after its passage and approval.

"Approved March 1, 1917."

Counsel for the Great Northern and the Milwaukee do not oppose this statute with suggestions that it is unconstitutional, but counsel for the Northern Pacific raise a doubt by saying "there is a question whether this statute, by failing to provide for a hearing, or to provide for a review by the Courts of any order which may be made, is not unconstitutional, in view of the decisions of the Supreme Court of the United States in the case of *Missouri P. R. Co. v. Nebraska*, 217 U. S. 196, and *Chicago & North Western R. Co. v. Ochs*, 249 U. S. 416". In the absence of the prescription of a penalty—and there is none in the act—there is not much force in the objection as to lack of hearing and review, for, apparently, the carriers are in

no peril for contumacy. Hearing is not an essential of legislative due process. (*Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210; *Winchester Ry. vs. Virginia*, 106 Va. 264, 281, 55 S. E. 692, 698). However, all this may be, we can and will remove the objection as to lack of hearing by prescribing same in our rules and regulations. As for court review, we prefer to regard Chapter 135 as within the provisions of the parent Railroad Commission Act, Chapter 37, Laws of 1907, whereby all orders of the Board are subject to judicial review. Chapter 135 simply adds another power to the Board, to be exercised as all its powers are exercised, under the basic act.

This Board, then, is now clothed with jurisdiction in the matter of commercial or industrial spurs by virtue of only two statutes, Chapter 105, Laws of 1913, and Chapter 135, Laws of 1917. It must be observed that our authority goes only to



We have no jurisdiction to order such spurs, then, at any points save at **stations** or **from within station limits**. This must always be a condition precedent—the first inquiry on application.

Character of Tracks or Spurs Board May Order Installed.

All counsel insist that there is a vital difference in the character of industrial spurs, etc., that some are private and beyond legislative control, while others are public, and it is only the latter that this Board may assume any authority over. This proposition is affirmed by the Supreme Court of the United States: "There is a clear distinction between spurs which are owned and operated by a common carrier as a part of its system and under its public obligation and merely private sidings." *Union Lime Co. v. Chicago & N. W. Ry. Co.*, 233 U. S. 211, at 222, opinion per

Mr. Justice Hughes, citing, *DeCamp v. Hibernia R. R. Co.*, 47 N. T. Law 43; *Chicago, etc. R. R. Co. v. Porter*, 43 Minn. 527; *Ulmer v. Union Lime Rock R. R. Co.*, 98 Maine 579; *Railway Company v. Petty*, 57 Arkansas 359; *Dietrich v. Murdock*, 42 Missouri 279; *Bedford Quarries Co. v. Chicago etc. R. R. Co.*, 175 Indiana 303. The 1913 statute expressly limits our authority to requiring public loading or unloading tracks, and a forceful argument may be made to the effect that the 1917 act, by its terms and obvious intent, necessarily confines us to public industrial spurs and tracks, i. e., to those intended to serve the public generally. Without dwelling at length on the terms of the 1917 act, however, we think it must be conceded that there are cases where a spur track is for an essentially private use, or is exclusively private in character, for example, an isolated spur on a mountain range running to a sheep corral, the spur being established by agreement between carrier and owner for the exclusive use of its owner and so maintained in practice.

On the other hand, if such spur were available to all the members of the public who could conveniently ship there from, the spur would be public in character. As a matter of fact there are many shippers so intent on preserving the exclusively private character of spur tracks that they not only lock the switches thereto, but maintain head gates across their tracks. The cases leave no doubt that the installation of a purely private spur is a matter wholly within the untrammelled discretion of the carrier and the applicant therefor, whose concord, if any, is expressed in a private contract enforceable in the courts. When the applicant insists that his spur be private he is not entitled to the compulsory aid of public authority in realizing his desires. Were this not so, this Board would soon become an agency for promoting private business ventures, instead of proceeding for the welfare of the general public. If the spur is for a public use, then it invokes public regulation, and its sponsors may seek the aid of public authority for their public purpose. Where the use is private, however, the state may not order A's property (the carrier's money) to be devoted to B's use. There can be no legal discrimination between shippers desiring private spurs, for there is no public duty on the part of the carrier to supply such facility. The cases are plain:

In *M. P. Ry. Co. v. Nebraska*, 164 U. S. 403, *supra*, where the Nebraska transportation board required the Missouri Pacific railway to grant a location on its right of way at Elmwood, for an elevator, the Supreme Court of the United States, in annulling the order, said:

"To require the railroad company to grant to the petitioners a location on its right of way, for the erection of an elevator for the specified purpose of storing from time to time the grain of the petitioners and of neighboring farmers, is to compel the railroad company, against its will, to transfer an estate in part of the land which it owns and holds, under its charter, as its private property and for a public use, to an association or private individuals, for the purpose of erecting and maintaining a building thereon for storing grain for their own benefit, without reserving any control of the use of such land, or of the building to be erected thereon, to the railroad company for the accomodation of its own business, or for the convenience of the public.

"This court, confining itself to what is necessary for the decision of the case before it, is unanimously of opinion, that the order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioners, for the purpose of building and maintaining their elevator upon it, was, in essence and effect, a taking of private property of the railroad corporation, for the private use of the petitioners. The taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amendment of the Constitution of the United States."

Missouri Pacific Ry. v. Nebraska, 164 U. S. 403, 417.

In *Hairston v. Danville & Western Ry. Co.*, 208 U. S. 598, where the court had before it the question of the right of the carrier to condemn a right of way through private land for a spur track to the premises of a tobacco company **Mr. Justice Moody** in considering "whether the uses of the spur track for which the land was taken were private, and therefore such uses for which a taking by the right of eminent domain is forbidden by the Fourteenth Amendment", said: "Here the proposed spur track can be used, and was designed to be used, not only for access to the factory of the tobacco company but for the storage of cars to be laden or unladen by receivers and shippers of freight, and to relieve the congestion of business which, through

the growth of the town, overburdened the limited trackage of the railroad." For these reasons the carrier's right to condemn was affirmed."

In **Missouri Pacific v. Nebraska**, 217 U. S. 196, the federal Supreme Court, in annulling judgements of the Supreme Court of Nebraska requiring a carrier to put in switches at its own expense on the application of elevator owners, said, on this point of private use:

"Why should the railroads pay for what, after all, are private connections? We see no reason."

In **Union Lime Company v. Chicago & N. W. Ry Co.**, 233 U. S. 211, the question before the court was whether the railroad company, which had been ordered by the Railroad Commission of Wisconsin to construct a spur track to the premises of the Eden Independent Lime & Stone Company, could condemn a right of way through the land of the protesting Union Lime Company. The latter company asserted that the track was for a private use, and hence the power of eminent domain might not be employed to construct it. The Supreme Court, however, took the view that the Wisconsin spur track statute under which the carrier was proceeding, "must be read in the light of the construction placed upon it by the state court which has held the described use to be a public one", and the spur being open to the public, eminent domain might be exerted to build the spur. Mr. Justice Hughes said:

"While common carriers may not be compelled to make unreasonable outlays (**Missouri Pacific Ry. Co. v. Nebraska**, 217 U. S. 196), it is competent for the State, acting within the sphere of its jurisdiction, to provide for an extension of their transportation facilities, under reasonable conditions, so as to meet the demands of trade; and it may impress upon these extensions of the carriers' lines, thus furnished under the direction or authority of the State, a public character regardless of the number served at the beginning. The branch or spur comes into existence as a public utility and as such is always available as localities change and communities grow. The Supreme Court of Wisconsin has left no doubt with respect to the public obligations imposed upon the carrier in relation to the spurs and branches to be provided under the statute in question, and we find no ground for the conclusion that this enactment was beyond the state power."

Union Lime Co. v. Chicago & N. W. Ry. Co.,
233 U. S. 211, 222.

In **Chicago & N. W. Ry. Co. v. Ochs**, 249 U. S. 416, the carrier challenged an order of the Railroad and Warehouse Commission of Minnesota requiring the company to extend a sidetrack leading from its main line to an adjacent factory, on the grounds that "to require the company to bear any part of the cost was to take its property for a private use without its consent, or if the use were public, to take the property for such use without compensation." In sustaining the order, the federal Supreme Court, speaking through Mr. Justice Van Devanter, said:

"Under the settled rule in Minnesota a sidetrack such as is in question here is not merely a private siding, but 'additional trackage for public use.' If need be the right of way for it may be acquired by condemnation. It becomes the property of the railroad company and an integral part of its railroad system, and is wholly under its control. Besides enabling the public to get the products of the industry served, it is at the service of all who have occasion to use it and must be operated accordingly. **Range Sand-Lime Brick Co. v. Great Northern Ry. Co.**, 137 Minnesota 314, and cases cited." * * * * *

"Recognizing then that the sidetrack is for a public and not a private use, we come to the question whether requiring the railroad company to bear a part of the cost involves a taking of its property without compensation.

"As a common carrier a railroad company assumes and must discharge the obligations which inhere in the nature of its business. Among these obligations is that of providing reasonably adequate facilities for serving the public. **Northern Pacific Ry. Co. v. North Dakota**, 236 U. S. 585, 595. To do this requires an expenditure of money, of course, but the expenditure is for property which will belong to the company and be employed in its business. The money is not taken from the company and given to others, nor is the use of the facilities to be uncompensated. Like other property employed by the company in the transportation of persons or property, the facilities have a real bearing on the rates which it is entitled to charge. Therefore an enforced discharge of the duty to provide such a

facility does not amount to a taking of property without compensation merely because it is attended with some expense. *Wisconsin, Minnesota & Pacific R. R. Co. v. Jacobson*, 179 U. S. 287, 302; *Minneapolis & St. Louis R. R. Co. v. Minnesota*, 193 U. S. 53; *Atlantic Coast Line R. R. Co. v. North Carolina Corporation Commission*, 206 U. S. 1, 26-27; *Missouri Pacific Ry. Co. v. Kansas*, 216 U. S. 262, 278-279; *Oregon R. R. & Navigation Co. v. Fairchild*, 224 U. S. 510, 529; *Michigan Central R. R. Co. v. Michigan Railroad Commission*, 236 U. S. 615, 631; *Chesapeake & Ohio Ry. Co. v. Public Service Commission of West Virginia* 242 U. S. 603.

"Of course, the expense is an important element to be considered in determining whether the requirement is within the bounds of reasonable regulation or is essentially arbitrary, but it is not the only one. The nature and volume of the business to be affected, the revenue to be derived from it, the character of the facility required, the need for it and the advantage to be realized by shippers and the public are also to be considered. Tested by these criteria we think the order in question is not arbitrary, but reasonable."

Chicago & N. W. Ry. Co. v. Ochs, 249 U. S. 416, 420, 421.

These cases need no fortifying comment. They plainly demonstrate that the state may require the construction of spur tracks, etc., only when such tracks are for a public purpose. The court was at pains in each case to inquire whether the public could use the spur. Accordingly we think Chapter 135, Laws of 1917, must be held to grant authority as Chapter 105, Laws of 1913, specifically provides authority, to order in spurs only when they are for public use.

Great difficulty, it is manifest from the cases, has been had in determining when a use is public. Without recapitulating the arguments, we are satisfied to state the decision of our own Supreme Court settling the law in this jurisdiction. In *B. A. & P. Ry. Co. v. M. U. Ry.*, 16 Mont. 504, the former company operating a railroad with its main line and spurs running convenient to private mines and ore houses and built primarily to serve a private mining industry of some magnitude, brought an action to condemn portions of the right of way of another railroad, operated by defendant Montana Union Railway. The defendant

company denied that public necessity, or public use required the construction of plaintiff's main line and branches. The Supreme Court had before it, squarely, the question: "Are plaintiff's road and branches public uses?", and in affirming that the road and branches were public uses, Mr. Justice Hunt, who spoke for the court, said in part:

"It is well established that if, in point of law, a use is public, the fact that not very many persons will enjoy the use is not material. (*Talbot v. Hudson*, 16 Gray 417.) The character of a way, whether it is public or private, is determined by the extent of the right to use it, and not by the extent to which that right is exercised. If all the people have the right to use it, it is a public way, although the number who have occasion to exercise the right is very small (*Phillips v. Watson*, 63 Iowa 28; *Lewis on Eminent Domain*, p. 241; *Shaver v. Starrett*, 4 Ohio St., 496; *Kettle River R. Co. v. Eastern R. Co.*, 41 Minn. 461; *Randolph on Eminent Domain*, Sec. 56).

"The circumstance that the plaintiff road was built by a private corporation, and that its branches run within convenient contiguity of private mines or ore houses, does not materially affect the road and give a private character to its use or to the use of its spurs. All termini of tracks and switches are more or less beneficial to private parties, but the public character of the use of the tracks is never affected by this. 'It may be in such cases that it is expected, or even that it is intended, that such tracks will be used almost entirely by the manufacturer; yet, if there is no exclusion of an equal right of use by others, and the singleness of use is simply the result of location and convenience of access, it cannot affect the question'. (*Chicago Dock Co. v. Garrity*, 115, Ill, 155; *Chicago B. & N. R. Co. v. Porter*, 43 Minn. 527; *St. Louis & M. S. Ry Co. v. Petty*, 57 Ark., 359; 20 L. R. A. 434).

"The force of these observations is peculiarly apparent in a new mining state. Frequently, railroads are extended by spurs or lateral connections of main lines, or by independent lines, into mining camps where but a single mine is developed and capable of shipping freight. Such roads or spurs are not infrequently built by the private enterprise of those interested in the one mine to be

benefited, and when constructed it is intended that the tracks will be used almost wholly by the mining company which constructed the spur. The supposed barrenness of the country contiguous to the road, or the undeveloped condition of the mountain in which the mine is lying, or, perhaps, the hitherto unrewarded search of the prospector, has encouraged the belief that, apart from the single mine owned by those who have built the railroad, there are no other paying properties upon which a railroad might rely for ores or supplies to transport. Such expected limited uses are but the results of the location of the mine and its inaccessibility. They do not in any way, however, exclude any equal right of use by others, perchance, desiring to ship freight or secure transportation over the road. To better illustrate our meaning, we have only to modify the instance just referred to of the railroad lateral built to a single mine. Suppose that a pioneer prospector has located and represented a claim contiguous to such railroad, but by reason of the impracticability or expense of constructing a wagon road, he has been obliged to simply keep what he believed was a good mine, hoping that in the future railroad facilities would afford him the opportunity to haul his ore to market. Suddenly, by the enterprise of others, and without any expectation on their part of aiding any project other than their own, a railroad is built, and he may attain the fruition of his hopes if he can use the railroad to ship his ore. Could it be contended with any merit that the railroad company, incorporated under the railroad laws of the state, can discriminate against him by saying, 'We are a private enterprise, for private use, and are not generally open to the public, and for this reason refuse to haul your ore, or to bring your machinery and supplies into these hills, and you cannot compel us to act otherwise.' Or, to carry the illustration further, suppose many mines are located close to the new line of road, and a mining district opened of incalculable interest to the state, a town springs up, with its diversified trade relations, and that thus the railroad originally constructed and intended to subserve the single mine, with little or no thought of any greater use, may become a measure of great utility to many people; must this development stop, or be dependent upon

the caprices or will or discriminatory orders of the incorporators or owners, based upon a claim that the road was constructed for private purposes, and cannot be made to answer the demands of the public?

"We say, after full deliberation, that the express command of Section 5 of Article XV, of the constitution, that 'All railroads shall be public highways, and all railroads, transportation and express companies, shall be common carriers, and subject to legislative control,' etc., supplemented by the statute (Section 680, p. 809, Div. 5, Comp. St. 1887) authorizing the construction of sidetracks, branches, etc., has made them instruments of public service as well as private profit, and is sufficiently comprehensive to include, not only the railroad used to illustrate our views, but, by analogy, the particular railroads of appellants and respondents in their main lines, lateral branches and spurs, to particular mines in and about the numerous mining dumps, shafts, and ore houses described in this suit, and situate upon the hills adjacent to the City of Butte. (Getz's Appeal, 3 Am. & Eng.R. Cas. 186).

"Furthermore, it is expressly provided by Section 7, Article XV, of the constitution, that 'all individuals, associations and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers . . . shall be made . . . between persons or places within this State . . . No railroad or transportation company . . shall give any preference to any individual, association or corporation in furnishing cars or motive power, or for the transportation of money or other express matter.' This provision, when considered with the previous one quoted, also demonstrates that the constitution, in its letter, its spirit, and its policy as well, classes all railroads, with their feeders, such as respondents and appellants operate, as public highways, subject to use by the public of right, amenable to the laws governing common carriers forever forbidding all obnoxious favoritisms between any who desire to use such highways. (St. Louis & M. S. R. Co. v. Petty, 57 Ark. 358, 20 L R. A. 334). This stable written policy is

doubtless the outgrowth of pernicious systems of discrimination and preference which railroad corporations may have indulged in throughout the land where their powers are unrestrained by constitutional or other restriction. It puts them all on a plane, and under the facts before us, respondent and appellants, as public highways, are alike the beneficiaries of its liberality, subject nevertheless, to its restrictions and liabilities.”

* * * * *

“The ever-varying condition of society is constantly presenting new objects of public importance and utility, and what shall be considered a public use or benefit may depend somewhat on the situation and wants of the community for the time being.’ But the underlying principle remains, that there must be a public use or benefit. ‘But what that shall consist of, or how extensive it shall be to authorize an appropriation of private property, is not easily reducible to general rule.’ (Scudder v. Falls Co., 1 N. J. Eq. 695; Talbot v. Hudson, 16 Gray 417; Buffalo & N. Y. R. Co. v. Brainard, 9 N. Y. 109).

“In thus ingrafting upon the law of this jurisdiction the doctrine that the magnitude of the interests involved may properly become a determining factor in sustaining the right of a railroad to construct lateral branches, tracks and spurs to mines and mining works, as public uses, by virtue of the law of eminent domain, we are always duly mindful, not only of the constitutional guaranty of the individual right of possessing and protecting property, but are equally impressed with the declaration that ‘the good of the whole’ is the very foundation of the constitution. Indeed, it may be said that upon this latter axiom of all government by the people rests the principle itself. The force of the principle may vary in different communities. What cogently applies to Montana, with its mountains and quartz, would be an absurd process of reasoning to urge in Louisiana, where scarce an undulation marks the surface, or a mineral lies beneath it. Therefore, to correctly define what that force is in the case before us, it is eminently reasonable and appropriate that the conditions of the whole people to be affected should be considered. In this state, where, almost

wholly through the facilities and advantages of railroads, the quartz mines have been developed to such an extent that the mineral output is only exceeded by that of one or two older mining states, the publicity of the use of railroads into the camps is too obvious to require more extended comment."

B. A. & P. Ry. v. M. U. Ry., 16 Mont., 504, 529, 530.

The court in that case was dealing with an **entire railroad system**, and its decision rests largely on the constitutional provision quoted, but it is nevertheless, careful at the outset to point out that before any facility can be called public, it is indispensable that **"all the people have the right to use it."** It makes no difference whether only a few do in fact use the facility, the test is **have all a right to use the facility if they desire.** Now, the phrase "all the people" must not be swallowed literally, as it does not include the whole world or any more than the relatively few who, in the nature of things, can have access to the facility. As Mr. Justice Holmes pointed out with reference to the public use of certain appropriated water: "The declaration in the constitution of 1879 that water appropriated for sale is appropriated to a **public use** must be taken according to the subject matter. The use is not by the public at large like that of the ocean for sailing, but by certain individuals for their private benefit respectively. The declaration, therefore, does not necessarily mean more than that the few within reach of the supply may demand it for a reasonable price". **San Joaquin & K. R. I. Co. v. Stanislaus County**, 233 U. S. 454.

In answer to the suggestion that the constitutional provision impresses any spur track with a public character, and consequently, the carrier cannot contract with an applicant for an exclusively private track, we think it enough to observe that neither constitutional nor legislative fiat can change that which is essentially private in character to that of a public nature. ("No doubt it is true that a legislative declaration of facts that are material only as the ground for enacting a rule of law, for instance, that a certain use is a public one, may not be held conclusive by the courts." **Block v. Hirsh**, 13 Adv. Ops. U. S. S. C. 1921, 531, at 532, citing cases), and if carrier and applicant honestly by words and acts, endeavor to create a private exclusive spur track, that may be done.

Whether all have a right to use the property will depend on actions and not professions. No words, no matter

how solemnly announced, whether in contracts, or *exparte* or *bi-parte* stipulations, can hide the public character of a spur, if in fact it is available to the relatively few who might use it, and a spur that is private in inception may become public in actual use. Its private character must be vigilantly maintained or it will become of public status. In this connection it is cautioned that use by more than one person, natural or artificial, may cause a spur, otherwise private to become public. Certainly, if the power of eminent domain is exerted in obtaining the right of way for a spur, that spur is public in character for profession of such public purpose must have been made before the power could be extended. From these things it follows that applications under Chapter 105, Laws 1913, and Chapter 135, Laws 1917, must set out facts clearly showing the public character of the spur proposed.

Regulations For Public Spurs and Tracks at Stations

Authority to promulgate rules and regulations is found in these words of Section 1, Chapter 135:

“The Board of Railroad Commissioners of the State of Montana shall have power and authority to, after such investigation as they may deem necessary, and under such rules and regulations as they may establish with reference thereto”, etc.

We take it that the words “with reference thereto” refer to rules and regulations to be established with reference to the investigations which the Board shall determine are necessary in the solution of spur track cases. Obviously, this Board cannot prescribe now, a set of rules and regulations whereby any given case shall automatically determine itself. If the legislature had thought such a course feasible it probably would have prescribed the conditions itself. Each specific case will be different, and the most the Board can do is to provide rules for a uniform procedure and for developing all the essential facts in each case—such facts to be “essential” within the meaning of the decisions of the United States Supreme Court.

The following criteria were adverted to in *Chicago & North Western R. Co. v. Ochs*, 249 U. S. 416:

“Of course, the expense is an important element to be considered in determining whether the requirement is within the bounds of reasonable regulation or is essentially arbitrary, but it is not the only one. The nature and volume of the business to be affected, the revenue to be derived from it, the character of the facility required, the

need for it and the advantage to be realized by shippers and the public, are also to be considered."

Tracks and spurs constructed, maintained and operated under these rules and regulations from the effective date of the order following will depend for their validity entirely on the order of this Board directing their construction, etc., and the same shall not be the subject of any contract between the carrier and the applicant or applicants therefor. It is only when a spur is essentially and exclusively private in character, that its construction, maintenance and operation shall be the subject of contract between the carrier and the applicant or applicants therefor. Under this view we do not find it necessary to examine, or attempt to harmonize or make uniform the various forms of contracts which the carriers have submitted in this proceeding. Since they may be used only for exclusively private spurs we have no concern with them. The subject of cost of construction will always present a question of importance in cases within our jurisdiction. But the precise boundaries of the inquiry should be observed. As the Supreme Court of the United States pointed out in *C. & N. W. Ry. v. Ochs*, 249 U. S. 416, *supra*, we are not working under the eminent domain powers of the sovereign, for while there is an enforced expenditure of the carrier's money and an enforced use of its property, this money and wealth are not taken from the carrier, but go into the acquisition of a facility which belongs to it and is operated as an integral part of its public system. We are dealing with the police power, and therein the expense of the undertaking "is an important element to be considered in determining whether the requirement is within the bounds of reasonable regulation or is essentially arbitrary". But, just as the carrier in the case of an exclusively private spur, can exact that the applicant therefore bear all the cost in connection with its construction and maintenance, so the state, in the case of a public spur furnished by its order in the enforced discharge of the carrier's public obligation, can require the carrier to bear all the cost therefor, limited only by the requirement that such cost must not be unreasonable, all things considered. If the cost to the carrier is, as its sole burden, unreasonable, we may, to remove such objection, require the same to be borne in part by those who will have the use of the facility. These remarks are not to be taken as an indication of any policy. They are included simply to point out the extreme boundaries of our jurisdiction.

In addition to prescribing such rules and regulations as are contemplated by the statute for realizing the construction, maintenance and operation of public spurs and

tracks at stations or from within station limits, in the order following, we shall endeavor to outline therein the present condition of the law, so that the order as a whole may serve as a convenient guide in the premises.

We invite the attention of the legislature to this entire subject, for there is no matter within our jurisdiction at the present time which more urgently demands the careful consideration of that body and the enactment of appropriate measures in the public interest than the subject of public and private spur tracks, and track extensions. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana held in its office in the Capitol, Helena, Montana, on Saturday, the 1st day of October, 1921, commencing at ten o'clock A. M., present Chairman Dennis and Commissioners Boyle and Ross, in the matter of Investigation and Suspension Docket Item B-5, inquiring into the practices, rules, conditions and contracts followed, enforced and negotiated by all carriers operating within the state of Montana, in the matter of the construction, installation and operation of spur tracks, industrial or commercial spurs and sidetracks and switches therefor, this subject being before the Board upon the complaint of various shippers, and this proceeding being instituted by the initial motion of this Board, and a full investigation of the matters and things involved having been had, and the Board having this day filed of record its report containing its findings and conclusions, which report is hereby referred to and of this order made a part, and now this Board being fully advised in the premises,

IT IS THEREFORE ORDERED That the following information and the following rules and regulations be, and the same are hereby, respectively, promulgated for the guidance of all concerned:

Section 1

General Information.

Under the law, as the same exists at the date of this order, October 1st, 1921, the Board of Railroad Commissioners of the State of Montana has authority to order and require of the rail carriers under its jurisdiction only:

(A) The construction or (and) extension, maintenance and operation of public loading or (and) unloading tracks at stations.

(B) The construction or (and) extension, maintenance and operation of commercial or industrial spurs, provided the same will be public in char-

acter, at stations or from within station limits when the length of such spurs shall not exceed two miles from the headblock to the end of track.

Such tracks shall not be constructed save by authority of this Board, and all the conditions affecting their construction, etc., shall be determined by this Board, and no contract of the carrier with respect thereto shall be effective unless approved by this Board.

In all other cases where the construction, maintenance and operation of public or private loading or unloading tracks or commercial or industrial spurs, sidetracks, etc., are sought by interested shippers, this Board is without any authority to order or require the same constructed, maintained and operated, but the Board will, nevertheless, in all reasonable and proper cases pursuant to what it conceives to be its public duty, exercise its offices informally in aiding the shippers and the carriers to work out a satisfactory solution of such cases, on the basis of private contract, which for such cases shall take the place of this Board's order.

Section 2

Rules and Regulations.

1. **Petition.** Whenever any shipper or shippers desire the construction of any of the facilities mentioned in paragraphs (A) and (B) of Section 1, above, such person or persons shall file with this Board a petition, in duplicate, therefor, which petition shall contain a concise statement of facts showing (a) that the track is to be constructed at a station or from within station limits, that the trackage sought is for a public use, the nature and volume of the business to be affected by the track, the probable revenue to be derived from it, the advantage to be realized by shippers and the public from its construction and operation, in contrast, if any, to existent hardship or difficulty due to the lack of such facility, and any other facts deemed material; (b) an estimate showing the cost as calculated by petitioners, to such petitioners, if they are willing to assume any part thereof, the cost to the rail carriers, and the total cost, such estimates to show quantities and unit costs and the source of information respecting the same; and further, terms of payment, if any, proposed by petitioners; (c) the location of existing tracks, and right of way of the rail carriers, the proposed track and such additional right of way outside of the rail carrier's ground as the proposed track may require, with statement of the owner or owners thereof. This part of the petition should be accompanied by a map attached to the petition as Exhibit "A", preferably on a scale of one inch to 50 feet or less for short tracks and one inch to 400

feet for long tracks, distinctively showing, with appropriate explanatory legend the physical situation existent and proposed, and clearly depicting station limits.

2. **Answer.** On the filing of such petition the Board will serve the duplicate copy on the rail carrier involved, with instructions to file its answer thereto, in duplicate, within a time designated, not to exceed twenty days. Such answer shall either (a) agree to the proposal of the petition in the terms thereof, waive hearing and give promise of completing the construction of said track within a time designated, not to exceed six months, or (b) plead facts in modification of any or all of the terms of said petition, but agreeing to construct the track proposed or one similar thereto, or (c) refuse to grant the petition as filed or any modification thereof, setting up its objections. The duplicate copy of the answer will be served by the Board on petitioner immediately on receipt of same.

3. **Hearing.** In the event of answer filed under (b) or (c) of Paragraph 2 preceeding, the Board will set a time and place for hearing the issues formed by the petition and answer, and thereat all interested persons will be given full opportunity to be heard in the premises.

4. **Fixed Conditions of Any Orders.** It is impossible to forsee the many questions that may arise in the cases respecting division of jurisdiction over the completed track, responsibility for maintenance, division of cost, division of ownership, etc., but, generally speaking, these conditions will, or, as a matter of law, must inhere in all orders issued by the Board in these matters:

(a) The rail carrier, as a matter of law, owns that part of the track on the right of way of the carrier, and all track on ground obtained by the carrier for the purpose by the exercise of eminent domain, purchase, etc.

(b) The ownership of that part of the track not lying on any land area owned by the carrier shall be the subject of written agreement between carrier and land owner. In the event agreement is not possible, this Board will in a proper case direct the carrier to commence condemnation proceedings, or interpose as a voluntary arbitrator of terms on request of both parties.

(c) All of the track, from switchpoint to the end of track, shall be maintained and operated at the sole expense of the carrier as additional trackage for public use.

(d) In cases where the Board orders any portion of the cost of constructing the track to be borne by persons other than the rail carrier, it will divide such cost equitably between petitioners, as nearly as may be, and in cases where

subsequent users appear they will be required, whenever possible, to reimburse, equitably, petitioners originally bearing part of the cost as a condition of their right to use the track.

(e) Abandonment or temporary discontinuance of the use of any track constructed by authority of this Board, may be accomplished only with the consent of the Board.

IT IS ORDERED That the secretary shall serve by mail a certified copy of this Report and Order upon each of the parties in interest in this proceeding, and that said order shall be in full force and effect on and after November 1, 1921.

INVESTIGATION AND SUSPENSION DOCKET IN RE RATES ON LIGNITE COAL

(March, 1921. Hearings March 12 and June 22nd, 1921)
(Item: I & S B-2 Decided November 2nd, 1921)

Interstate Commerce—What Constitutes—Jurisdiction of Board.

1. To bring transportation within the control of the state, as part of its domestic commerce, the subject transported must be within the entire voyage under the exclusive jurisdiction of the state, hence if the subject of commerce moves during substantially continuous and unbroken transportation for any distance in an adjoining state, even though such transportation begins and ends in one state, the transportation is interstate, and beyond the jurisdiction of the Board of Railroad Commissioners.

Rates—Lignite Coal—Reasonableness—Comparisons—North Dakota Scale—Head of Lakes Scale.

2. The Board of Railroad Commissioners in a search for reasonable rates for lignite coal did not consider, for comparative purposes, the existing North Dakota lignite rate structure for the reason that the North Dakota lignite scale declared confiscatory in 236 U. S. 585 when increased by the advances under G. O. 28 and Ex Parte 74, is actually higher than the existing structure offered as a reasonable basis. Rates on soft coal from the Head-of-the-Lakes to points in Minnesota and Dakotas, prescribed by I. C. C. in March, 1921, found more suitable for purposes of comparison.

Rates—Lignite Coal—Reasonableness.

3. Lignite coal moves in this State on the same rate scale as Montana semi-bituminous coal because practical differentiation is difficult and lignite values compare favorably with representative grades of Montana semi-bituminous. The instant record does not impeach the reasonableness of the general scale in force November 2nd, 1921, and the Board will not disturb the same until such time as it is specifically proved unjust, or must fall as a consequence of some general reduction.

Rates—Lignite Coal—Slack—Reduction.

4. Carriers ordered to establish reduced rates on lignite slack, on basis of 20% less than lump rates, in order to put lignite slack as far as possible on same basis as semi-bituminous slack, the lump coal of both varieties moving on the same rate scale.

Inquiry into alleged excessive and unreasonable freight rates on lignite coal, moving intrastate. Rates on lignite slack prescribed.

Appearances: Warren Jennison for the Jennison Coal Mining Company; W. H. Stewart for the Russell Miller Milling Company; G. A. Jackish for the Speed Electric Company; Scott Smith for the City Flour and Grain Company; Harry C. Tute for the Listerud Power Company; R. J. Hagman, Attorney, P. H. Burnham, General Freight Agent, for the Great Northern Railway Company; J. G. Morrison, Assistant General Freight Agent, for the Northern Pacific Railway Company; H. R. Wahoske, D. F. & P. A., for the Chicago, Milwaukee & St. Paul Railway Company; E. G. Toomey, Counsel for the Board.

Before: Chairman Dennis and Commissioner Ross at Poplar.

By the Board: The Jennison Coal Mining Company of Fairview, Montana, by complaint made to this Board in January 1921, challenged the reasonableness of existing rates on lignite coal moving (a) from its mine near Fairview, Montana to Sidney by the Great Northern, to points on the Richey Branch of the Great Northern, and to Glendive on the Northern Pacific, and points intermediate Sidney and Glendive, and west of the latter point and (b) from the same mine to points on the main line of the Great Northern east of Glasgow, Montana.

Other shippers having complained formally and informally since the advent of war and post-war rates, alleging intra-state rates on this commodity generally to be unjust and unreasonable, the Board of its own motion set the whole subject matter down for hearing on the February, 1921, Investigation and Suspension Docket. The three principal carriers appeared thereat, protested against such summary treatment of the subject as the Investigation and Suspension Docket contemplates, and under Ex Parte Order No. 304 formally requested separate public hearing on the matter with full opportunity adequately to prepare testimony therefor. This request, coupled with the fact that no shippers appeared at the March hearing on the February I & S Docket and that the subject was of more or less general interest, moved the Board to set the matter for separate hearing at Poplar, Montana, the center of the lignite coal territory, on June 22, 1921.

At this hearing the formal complainants appeared in person or by attorney and the three principal rail carriers in the state made extensive proof in support of their protests against disturbing the existing structure.

The case naturally divides itself, as indicated, into two parts, first, the specific complaint of the Jennison Coal Mining Company against rates on the Great Northern, and on the Northern Pacific to Glendive, and second, the intra-

state structure as a whole, with respect to the particular commodity, lignite coal. From the facts now developed, it appears that every shipment of coal which is carried by rail from the mine to any point in the State of Montana moves interstate and not intrastate. The conditions making for this anomalous situation are as follows: The company's mine is located in Richland County, Montana, about one-third of a mile west of the Montana-North Dakota boundary line, and about one-half of a mile west of the main line of the Great Northern which runs north and south, almost parallel with the boundary line separating the two states and but a few hundred feet east thereof in North Dakota. To reach the coal mine in question and enable its products to move in commerce, an industry spur some 2906 feet in length has been built from the main line in a general southwesterly direction, **across the Montana-North Dakota boundary line** to the company's mine. At the Montana terminus of the main spur there is a loading spur about 181 feet long and a storage track about 490 feet long. Coal shipments moving north from the mine to Glasgow or points east thereof cross the boundary line where it is intersected by the spur and re-enter Montana about eight miles north of the Jennison spur where the interstate line is again crossed, while shipments destined to Sidney, Glendive or intermediate points move across the boundary line where it is intersected by the spur, reentering Montana less than a mile south of the Jennison spur where the interstate line is again traversed. The total length of track in North Dakota from the point where the track enters North Dakota on the north and re-enters Montana on the south is 8.65 miles and there is no station of any consequence on this segment.

Is such movement of coal "commerce among the several states" within the meaning of paragraph (3), Section 8, Article 1, of the Constitution of the United States which provides that the Congress shall have power "To regulate commerce with foreign nations, and among the several states and with the Indian Tribes?" That the shipments from producer to distributors and consumers in the ordinary course of trade are 'commerce' within the meaning of the provision is beyond debate. In view of the physical proximity of the point of origin and many of the points of destination all within Montana, of the wholly preliminary interstate haul on the spur from the mine to the main line, of the very trivial haul beyond the Montana line, almost negligible in its consequences and at all points contiguous to the boundary line, we have searched the cases in the hope that we might find some persuasive authority where the facts were said to exhibit intrastate commerce in substance, if not in form.

And while there are cases that lend encouragement to this hope, the law is established to the contrary. As we find it, the movement of property in the course of trade by a rail carrier from any point in one State to any point in another State, irrespective of whether both the point of origin and the point of destination are wholly within one State, is interstate commerce. There seems to be no necessity that an interstate line intersect a straight line drawn between the point of origin and destination. The test doesn't depend on any principles of geometry. It is enough that at some time during substantially continuous or unbroken transportation, the property moves from any point in one State to any point in another State. While this test may ignore situations which reasonable men may look upon as involving, essentially, intrastate commerce (and certainly the instant case seems to present as slender a state of interstate commerce as can be imagined) it has the advantage of simplicity and certainty. It is a rule of thumb easy of application by any one concerned. When it comes to the prescription of rates the utility of the rule demonstrates itself. The rate authorities of either State could not fix the rate for a foot of movement in the other state. This Board could, assuming jurisdiction split on the basis of trackage on each side of the boundary line, fix a rate on the spur only up to the Montana-North Dakota line, and North Dakota only on the few miles of track within its borders. Manifestly there should be but one rate fixed by one authority for the benefit of all concerned, or else the division of regulation of an interstate movement would, in the light of national experience, give rise to the very evils which the Constitution was designed to prevent.

The persuasive decisions all support this position. In *Gibbons v. Ogden* (1824) 9 Wheat. (U. S.) 1, 6 L. ed. 23, the touchstone of judicial exposition of the commerce clause, Chief Justice Marshall defined intrastate commerce as "that commerce which is completely internal, which is carried on between man and man in a state or between different parts of the same state, and which does not extend to or affect other states." Justice Field's definition excludes all doubt: "To bring the transportation within the control of the state, as part of its domestic commerce, the subject transported must be within the entire voyage under the exclusive jurisdiction of the state." *Pacific Coast S. S. Co. v. Railroad Commission*, 9 Sawyer 253, 18 Fed. Rep. 10. This definition is held by the Supreme Court of the United States to govern a comparatively late case involving the very situation now under discussion, that is, transportation beginning and ending in one State but passing through an adjoining State or

Territory; see *Hanley v. Kansas City S. Ry. Co.* 187 U. S. 617; 23 Sup. Ct. Rep. 214; 47 L. ed 333.

In addition to the Hanley case, from the court having the last word on the subject, the following cases hold that transportation between points in the same state over a route part of which is in another state constitute interstate commerce. *New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co.*, 2 Inters. Com. Rep. 293; *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 7 Inters. Com. Rep. 92, *United States v. Delaware, L. & W. R. Co.* 152 Fed. 269; *Poor v. Iowa C. R. Co.* 155 Fed. 226 (dictum); *United States v. Erie R. Co.* 166 Fed. 352; *St. Louis & S. F. R. Co. v. Hadley*, 168 Fed. 317; *St. Louis & S. F. R. Co. v. State*, 87 Ark. 562, 113 S. W. 203; *Patterson v. Missouri P. R. Co.* 77 Kan. 236, 15 L. R. A. (N. S.) 733, 94 Pac. 138; *State v. Cumberland & P. R. Co.* 105 Md. 478, 66 Atl. 458; *State ex rel. Railroad & W. Commission v. Chicago, St. P. M. & O. R. Co.* 40 Minn. 267, 3 L. R. A. 238, 2 Inters. Com. Rep. 519, 12 Am. St. Rep. 731, 41 N. W. 1047; *Hardwick Farmers' Elevator Co. v. Chicago, R. I. & P. R. Co.* 110 Minn. 25,—L. R. A. (N. S.)—, 124 N. W. 819, followed in *Gray v. Minneapolis & St. L. R. Co.* 110 Minn. 527, 124 N. W. 1110; *Mires v. St. Louis & S. F. R. Co.* 134 Mo. App. 379, 114 S. W. 1052; *Shelby Ice & Fuel Co. v. Southern R. Co.* 147 N. C. 66, 60 S. E. 721; *Davis v. Southern R. Co.* 147 N. C. 68, 60 S. E. 722; *Shelby Ice & Fuel Co. v. Southern R. Co.* 147 N. C. 61, 60 S. E. 723; *Sternberger v. Cape Fear & Y. Valley R. Co.* 29 S. C. 510, 2 L. R. A. 105, 7 S. E. 836; *Hunter v. Charleston & W. C. R. Co.* 81 S. C. 169, 62 S. E. 13; *Frasier v. Charleston & W. C. R. Co.* 81 S. C. 162, 62 S. E. 14.

The following cases falsely interpreting *Lehigh Valley R. Co. v. Pennsylvania* 145 U. S. 192, 36 L. ed. 672, 4 I. C. C. 87, 12 Sup. Ct. Rep. 806, have held that the same transportation does not constitute interstate commerce. *United States ex rel. Kellogg v. Lehigh Valley R. Co.* 115 Fed. 373; *Campbell v. Chicago, M. & St. P. R. Co.* 86 Iowa, 587, 17 L. R. A. 443, 4 Inters. Com. Rep. 203, 53 N. W. 351; *Seawell v. Kansas City Ft. S. & M. R. Co.* 119 Mo. 222, 5 Inters. Com. Rep. 262, 24 S. W. 1002; *Dillon v. Erie R. Co.* 19 Misc. 124, 43 N. Y. Supp. 320, Quaere. *Burlington C. R. & N. R. Co. v. Dey*, 82 Iowa, 312, 12 L. R. A. 436, 3 Inters. Com. Rep. 584, 31 Am. St. Rep. 477, 48 N. W. 98.

These latter cases, however, must be disregarded in view of the compelling authority of the Hanley case, and, as a matter of fact they have generally been disregarded by courts since the appearance of the Hanley case, as reference to the following late decisions will show. *St. Louis I. M. & S. R. Co. v. Spriggs* (1914) 113 Ark. 118, 167, S. W. 96; *Crescent*

Brewing Co. v. Oregon Short Line R. Co. (1913) 24 Idaho, 106, 132 Pac. 975; **Louisville & N. R. Co. v. Allen** (1913) 152 Ky. 145, 153 S. W. 198, rehearing denied in (1913) 152 Ky. 837, 154 S. W. 371; **Deardorff v. Chicago, B. & Q. R. Co.** (1914) 263 Mo. 65, 172 S. W. 333; **Bowles v. Quincy, O. & K. C. R. Co.** (1916)—Mo. App.—187 S. W. 131; **Howard v. Chicago R. I. & P. R. Co.** (1916)—Mo. App.—184 S. W. 906; **Holden v. Maine C. R. Co.** (1914) 77 N. H. 397, 92 Atl. 334; **Lynch v. New York C. & H. R. R. Co.** (1915) 89 Misc. 472, 153 N. Y. Supp. 633, affirmed without opinion in (1916) 172 App. Div. 934, 156 N. Y. Supp. 1131; **Hall v. Pennsylvania R. Co.** (1917)—Pa.—L. R. A. 1917-F, 414, 100 Atl. 1035; **Traynham v. Charleston & W. C. R. Co.** (1912) 92 S. C. 43, 75 S. E. 38; **Wichita Falls & W. R. Co. v. Asher** (1914)—Tex. Civ. App.—171 S. W. 114.

In view of the facts and the law there is nothing else for us to do but dismiss the complaint of the Jennison Coal Mining Company with the recommendation that it be carried to the Interstate Commerce Commission.

We come now to a consideration of the present scale of rates on lignite for intrastate movements in Montana, alleged to be unreasonable when compared to the lignite scale prevailing in North Dakota and further unjust because lignite coal moves in this state on the same rate scale as semi-bituminous coal, whereas it is alleged to be of inferior value. By Report and Order No. 30, October 18, 1909, 2 Mont. R. R. & P. S. C. Reports 89, this Board concluded a comprehensive inquiry into Montana coal rates which was commenced in April of that year. General reductions were effected, averaging about 22.33 per cent. The scale created as a result of that investigation is the basis of the existing intrastate coal rate structure. On that basis there has been super-imposed the Director General's advance of from 20 per cent to 100 per cent under General Order 28, and the general rate advance of 1920, amounting to twenty-five per cent.

The present Montana rates compare very favorably with the scale of rates on soft coal from the Head of the Lakes to destinations in Minnesota, North Dakota and South Dakota prescribed by the Interstate Commerce Commission, March 8, 1921 in the case of **Holmes & Hollowell Company v. Great Northern Railway Company**, 60 I. C. C. 687. For a distance of 200 miles the Montana single line scale and the Holmes and Hollowell scale for one or more lines are the same. For other distances the Montana scale is somewhat higher. The minima weights are the same. When it is remembered what immense quantities of coal move by rail from the Head of the Lakes (ports of Duluth, Minn., West Duluth, Minn.,

Rices' Point, Minn., Superior, Wis., Allouez, Wis., Itasca, Wis., Ashland, Wis., and Washburn, Wis., to points in the three states mentioned, constituting an area of greater traffic density than Montana, there is found no reason for disturbing the present structure so far as the Head of the Lakes scale is material in comparison. The carriers further point out that the Montana scale is lower than the Montana-North Dakota interstate scale on lignite and likewise lower than the Washington intrastate scale applicable to all soft coals.

It is urged however, that when we come to comparisons with other scales we should look only at the present intrastate scale on lignite coal obtaining in North Dakota. Various reasons are advanced for the propriety of this comparison but they all resolve themselves into the proposition that lignite mining conditions and railroad operating conditions in that State are nearly identical with the mining and rail conditions in the lignite coal territory of our own State. The North Dakota intrastate scale is very much lower than our scale, but notwithstanding our disposition to establish as low a rate as is reasonably possible on this primary commodity, we cannot think of contrasting the Montana structure with the North Dakota structure, much less adopting the latter. The present North Dakota lignite scale, in our opinion, rests under the condemnation of the decision of the Supreme Court of the United States, in **Northern Pacific Railway v. North Dakota**, 236 U. S. 585, reversing 26 North Dakota, 438, for the reason that the lignite scale then declared confiscatory by the tribunal which has the last word on the subject, when increased by the advances under G. O. 28 and Ex Parte 74, is actually higher than the present North Dakota scale, which arises from the Director General's emergency order of November 20, 1918, plus the Ex Parte 74 increase. Accepting the advances of G. O. 28 and Ex Parte 74 as reasonable so far as wholesale horizontal increases can ever come within that term (and inquiry on that point seems foreclosed) any scale which was confiscatory before those increases must remain confiscatory notwithstanding those increases, costs of operation showing no material decrease. This must be true for the basis against which the percentage increases was applied, was assumed to be reasonable so as to admit of percentage increases. But when it affirmatively appears that such basis was unreasonably deficient the assumption disappears and any uniform percentage increase only perpetuates the error. Hence a proffered scale which is substantially lower than a scale essentially confiscatory, one factor of which has, indeed, been held confiscatory by the Supreme Court of the United States, must be rejected as unworthy of serious attention, in a jurisdic-

tion where rail operation, if not actually more expensive, is certainly no less costly.

The following table illustrates the deficiency of the present North Dakota scale:

Miles	1	2	3	4		5	6	7	
				Single Line	Joint Line			Single Line	Joint Line
5	30	40	80	50	60	81	108	67½	81
10	30	40	80	50	60	81	108	67½	81
15	35	42	80	50	60	94½	108	67½	81
20	37	45	80	50	60	94½	108	67½	81
25	38	47	80	50	60	94½	108	67½	81
30	40	50	90	50	60	108	121½	67½	81
35	41	52	90	50	70	108	121½	67½	94½
40	43	55	90	50	70	108	121½	67½	94½
45	44	57	90	60	80	108	121½	81	108
50	46	60	100	60	80	108	135	81	108
55	47	62	100	60	80	108	135	81	108
60	49	64	100	60	80	108	135	81	108
65	50	66	100	60	80	121½	135	81	108
70	52	68	100	60	80	121½	135	81	108
75	53	70	110	70	90	121½	148½	94½	121½
80	55	72	110	70	90	121½	148½	94½	121½
85	56	74	110	80	90	121½	148½	108	121½
90	58	76	110	80	90	121½	148½	108	121½
95	59	78	110	80	100	121½	148½	108	135
100	61	80	120	80	100	135	162	108	135

1. Legislative Lignite Rates found confiscatory by U. S. Supreme Court, March 8, 1915.
2. Lignite Rates established effective September 4, 1915.
3. Lignite Rates shown in preceding column increased as per General Order 28, effective June 25, 1918.
4. Lignite Rates published by Director General applicable locally in North Dakota and from North Dakota to Minnesota and South Dakota, established under FRA 2078, effective November 20, 1918.
5. Legislative Lignite Rates found confiscatory by U. S. Supreme Court plus General Order 28 and Ex Parte 74 Increases.
6. Lignite Rates shown in Column 2 plus increases established under General Order 28 and Ex Parte 74.
7. Present Lignite Rates applying locally in North Dakota and from North Dakota points to stations in Minnesota and South Dakota, being rates shown in Column 4 increased per Ex Parte 74.

Were we to follow the North Dakota scale we would be inviting the rebuke which the court administered in 236 U. S. where Mr. Justice Hughes said:

"The constitutional guaranty protects the carrier from arbitrary action and from the appropriation of it's property to public purposes outside the undertaking assumed; and where it is established that a commodity, or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service after taking into account

the entire traffic to which the rate applies, it must be concluded that the State has exceeded its authority."

It is pointed out, however, that the carriers in North Dakota have acquiesced in this condemned scale for some time, and therefrom protestants draw the inference that it must not be as unsatisfactory in actual operation as it is alleged to be in theory. To this suggestion the carriers respond that they were helpless to effect any change during Federal control, that the Transportation Act, 1920, carried the rates over from March 1, 1920, until September 1, 1920, and that up to May 1921, they were engaged in fighting for a general advance of North Dakota rates before the Interstate Commerce Commission, which was finally obtained on May 3, 1921. There had not been, then, up to the time of hearing herein, any opportunity for the carriers formally to present their views on this particular scale. However, this may be, we are confined to a consideration of the circumstances obtaining in our own State and can not speculate as to rail policies projected in other jurisdictions.

The comparison of different rate scales in an effort to arrive at reasonable rates, though very generally employed for lack of a better method, is at best a crude makeshift in an art where so much depends on the accuracy of mathematical analysis.

Aside from the North Dakota comparison there is no evidence in the record to impeach the reasonableness of the present scale. Until the general rate advances incident to the war and its aftermath, there was no sign of dissatisfaction with the intrastate scale as a whole and all our investigations show that there is no suggestion now (save as hereafter noted) that this particular rate scale is entitled to such separate consideration as was extended for example, in *Re Rates on Road-Building Materials*, 14 M. U. R. We do not, therefore, feel warranted in disturbing the scale until such time as it is specifically proved unjust or must fall as a consequence of some general reduction. Nothing proves the unfitness of a rate scale like an actual trial and the ordeal through which the whole intrastate and interstate structure is now passing will very shortly, we think, disclose its true utility.

In one particular, however, the record requires that we correct the existing scale to insure a lower rate for lignite slack and screenings. As long as lignite coal moves on the same scale of rates as the semi-bituminous coal produced in Montana it should receive the same treatment so far as slack is concerned. The tariffs show that the carriers have con-

sistently recognized the essential differences between slack and lump coal by applying rates from 12½ cents to 50 cents per ton lower on slack coal than on lump. Such rates on slack, while not of general application, have been promulgated on request of shippers, wherever reasonable need therefor was suggested, and such rates are in force today from the principal areas and camps where semi-bituminous coal is mined.

While it is true that lignite coal slacks after being raised and carried to the surface with greater rapidity than standard soft coals, indeed that is one of its distinctive characteristics, it is just as true that the lignite mined in Montana remains a lump coal (a longer time in winter than in summer) for periods sufficient to more than cover its movement in the ordinary course of trade, and usage by its consumers. This quality as effectually distinguishes lignite lump from lignite which becomes slack after an appropriate season as the same quality in other soft coals. The real difference in this respect is that with soft coals other than lignite the period required for decomposition is longer than in the case of lignite. To our certain knowledge lignite slack and screenings is employed in many steam plants, particularly public utilities, in the State. Such plants should have the same benefit as far as lignite slack is concerned as steam plants using any grade of semi-bituminous coal. This does not mean that separate rates are to be prescribed for lignite coal in contradistinction to semi-bituminous coal, but it does mean that where it is desired to ship lignite slack or screenings it shall have the benefit of the reduced rates on slack applicable to all soft coals. Petitioners stressed the argument that lignite coal should move, generally, on a lower rate than semi-bituminous coal because lignite, they alleged, was a cheaper grade of coal, of much less value in the market. Their own evidence, however, contradicts the position, for it is shown that the coal from the Jennison Coal Mining Company sells at the mine for as much as the mine price of Sand Coulee semi-bituminous coal, a fairly representative grade of Montana semi-bituminous. It would be a most difficult task in Montana, to determine just what coal is "lignite" and just what coal is "semi-bituminous", for there are so many grades of the latter which include coals frequently classified as lignite, or into which lignite is shaded, that practical differentiation seems well nigh impossible. Geologists and coal experts do not agree as to effectual means of distinguishing lignite from many grades of Montana semi-bituminous, but on the contrary frequently pronounce coal, otherwise designated as lignite, semi-bituminous. While the carriers' agents are not expected to possess expert knowledge on the subject,

it seems clear from the record that the confusion respecting grades of soft and lignite coals is so common in ordinary trade that if a lower or different rate were prescribed for "lignite" coal than that borne by semi-bituminous coal generally, the application of the rates to the particular shipment would be the source of constant dispute between coal producers and other shippers and the carriers as to the character of the coal offered for transportation. In North Dakota a different condition exists owing to the fact that lignite coal—in reality a mineralized wood substance occupying a position between peat and coal—is the only variety of coal mined in that state. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol, at Helena, on the 2nd day of November, 1921, commencing at ten o'clock, A. M. Present Chairman Dennis and Commissioners Boyle and Ross, in the matter of the Investigation and Suspension Docket, Item B-2, rates on lignite coal between any two points within the State of Montana, and in particular between stations on the lines of the Great Northern Railway Company, the Northern Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company, this matter being before the Board upon the complaint of various shippers, and this proceeding being instituted by the initial motion of this Board, and a full investigation of the matters and things involved having been had, the carriers hereinafter named participating therein at public hearing, and the Board having this day filed of record its report containing its findings and conclusions which report is hereby referred to and of this order made a part, and now this Board being full advised in the premises,

IT IS ORDERED That the complaint of the Jennison Coal Mining Company, of Fairview, Montana, be and it is hereby dismissed, for want of jurisdiction in this Board to entertain the same.

IT IS FURTHER ORDERED That all and singular the various complaints made or filed against the Montana intrastate scale of rates on lignite coal save and except such complaints as relate to failure to apply lower rates to lignite slack, etc., be and they are hereby dismissed.

IT IS FURTHER ORDERED That the Great Northern Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, and the Northern Pacific Railway Company be, and they are, and each of them is, hereby notified and required to establish in lawful manner and form on or

before December 15, 1921, and thereafter to maintain, until the further order of this Board, a scale of rates on lignite slack or screenings hereinafter defined, on a basis which shall not exceed 80 per centum of the present intrastate rates applicable to Montana soft coals, that is to say that the rates for lignite slack shall be not higher than twenty per centum less than the existing rates on lump coal.

IT IS FURTHER ORDERED That for the purpose of this order, lignite slack or screenings shall be, and they are, and each of them is, hereby defined, as all coal that has passed through a screen $1\frac{1}{4}$ inch mesh or $1\frac{5}{8}$ inch round perforated plate or through the equivalent of either in bar or oblong openings.

IT IS FURTHER ORDERED That for cars of not over 40,000 pounds capacity the minimum weight shall be 40,000 pounds; that for cars of over 40,000 pounds capacity the minimum weight shall be ten per cent (10%) less than marked capacity of car, but not more than 72,000 pounds; that the minimum weights for ore, coal or gondola cars shall be actual weight when loaded to full visible capacity.

IT IS FURTHER ORDERED That the secretary shall serve a certified copy of this Report and Order upon each of the parties hereto, and the same shall be in full force and effect forthwith according to its terms.

INVESTIGATION AND SUSPENSION DOCKET. IN RE RATES ON CEMENT, SAND, GRAVEL AND CRUSHED STONE

March 1921. Hearing April 15, 1921.)

(Item: I & S B-8. Decided April 28, 1921.)

Conference, November 16, 1921, Decision, November 17, 1921.

Road-building Materials—Rates—Reductions—Prior Action.

By order of April 28, 1921, the Board reduced rates on cement to basis prevailing on August 31, 1920, and rates on sand, gravel, crushed stone, etc., to substantially same basis, reductions to commence May 20, 1921, and conclude November 20, 1921. On further consideration in November, reasons for reduction found to continue in unabated force, and such temporary reduced rates ordered to become permanent.

Rates prescribed by Report and Order I & S B-8, April 28, 1921, 14 M. U. R., continued in effect until further order of the Board.

Appearances: W. H. Merriman, for the Northern Pacific Railway Company; A. J. Hills, for the Great Northern Railway Company; Henry Coulam for the Oregon Short Line Railway Company; J. C. Maring, for the Butte, Anaconda & Pacific Railway; W. J. Keeley for the Chicago, Milwaukee & St. Paul Railway Company; E. G. Toomey, Counsel for the Board.

Before: The Board, en banc, in Helena.

By the Board: By decision of April 28, 1921, in Investigation and Suspension Docket for March, 1921, Item B-8, the Board required the carriers respondents thereto to establish on or before May 20, 1921, reduced carload rates on sand, gravel, broken or crushed stone and cement, such rates "to continue in force and effect to and including the 20th day of November, 1921, when the same shall expire without further action of this Board." The report and order containing the decision referred to is hereby made a part of this report and order, the same as if incorporated at length herein.

The carriers published in due course, tariffs stating the rates ordered. In September 1921, persons who were party complainants in the original proceeding brought to the attention of this Board the alleged continuance of the same conditions which moved the Board to its decision of April 28, 1921, and asked that the rates be made permanent. As the date of expiration approached protests against reversion to the former rates increased and these objections came from dealers, contractors, municipalities, architects, builders, commercial organizations, and the State of Montana. The reasons advanced in support of the plea that the rates be made permanent are the same as those presented heretofore, though various interests call our attention to the fact that during the past sixty days, in the face of winter, they have found more disposition on the part of prospective home builders and highway builders to commence work or initiate work for early spring, than at any time in the last two years, and that in numerous instances the continuance of existing rates is specifically put as a condition of activity.

On October 27, 1921, the Board advised the carriers concerned of shippers' requests as follows:

"As you are aware the Board's order, I & S B-8, April 28th, 1921, prescribed rates on the above commodities, which rates expire by limitation November 20th. It has been brought to our attention by a number of the commercial organizations throughout the state that the conditions existing in April last, making it necessary and advisable to

promulgate a schedule of reduced rates have not materially changed during the past six months, and that the restoration of the former scale, at this time, would be a retrograde step in the procession of readjustment, now taking place. The Board is being urged to make these rates permanent, and upon receipt of this letter we beg to ask that you give the matter prompt consideration, and advise what the attitude of your company is in this respect."

Following this letter the carriers whose appearances are entered, *supra*, appeared before the Board at an informal hearing on November 17, 1921, for themselves, and other carriers concerned, to protest against any action whereby the existing rates would be projected beyond November 20th. In their behalf it is contended—chiefly against the reduction in rates on cement—that the reduced rates failed to persuade new construction and consequent increased traffic, that the reductions benefited only contractors completing contracts already made, and not the public, and lastly that a continuation of such rates on cement in particular will mean a protest from cement manufacturers in other states asserting discrimination in favor of local producers. It must be acknowledged that the movement in 1921 of the commodities here involved, was materially less than in 1920, notwithstanding the decreased rates operative from **May 20 to November 20** of the former year, a fact directly attributable to the acute industrial depression in Montana; but of course it should be noted that until September 1, 1920, rates on these commodities were not burdened by Ex Parte 74 increases. While carload totals are less, specific instances exhibited prove that, had the reductions not been in force, the 1921 rail haulage of these commodities must have been almost negligible. The general statement that contractors only have been the principal beneficiaries of lower rates is opposed on our records by proof of rebates on existing contracts, from dealer to contractor and from contractor to contractee, in amounts equivalent to the freight rate saving under contract computations on rates previously in force. Again, the Chief Engineer of the State Highway Commission, after directing our attention to freight rate savings of \$3,269.00 during the 1921 road-building season, testifies that 1921 has witnessed a considerable reduction in prices bid by contractors for the various items of work entering into the construction of highways, part of which come from lower freight rates, and that the fact that bid prices for items where rail-shipped materials are involved, are lower than last year, indicates a direct benefit to the State accruing

from lower rates. The price of transportation being regarded by all concerned as a tax, it is relatively certain that any reduction will be quickly claimed by those taxed and as readily conceded by those who quote it in bids or estimates from necessity.

Carriers do not present any evidence to establish the fact of competition between cement producers and manufacturers outside of Montana and those whose plants are located in this State. In the absence of such proof we feel warranted in relying on the condition heretofore disclosed, viz; that Montana is furnished with cement from its own plants, and this with or without the existing rate reductions, hence complaints based on alleged discrimination, not having already appeared, will not be provoked by continuing the instant rates.

Closely analyzed, the carriers' objections reduce themselves to a general protest against departure from the rate level fixed by Ex Parte 74, and our action in Report and Order No. 294, 13 M. U. R. 63. We are satisfied, however, that the reasons recited for the departure in May 1921, continue with unabated force at this time, that the experience had in the interim proves the soundness of extending exceptional treatment to these rates on basic commodities so vital to our industrial rehabilitation, to the prosecution of public works, and the upbuilding of homes.

The commodities herein involved, in addition to being specifically or partly excepted in many states from the application of Ex Parte 74 rates in 1920, (See 14 M. U. R.) have, on subsequent consideration been restored to the rate basis in force prior thereto by states in every rate group of the country. The record does not develop any facts tending to show that such commodities in Montana should be excepted from the recognized necessity for aiding their movement wherever possible; the contrary is shown.

After careful consideration of the whole record we conclude that existing rates on sand, gravel, broken stone, crushed stone and cement are reasonable, and should be continued in force until the further order of this Board. Though urgently importuned to extend these rates to allied building materials, we are forced to leave them out of consideration herein, there being no substantial proof, from either side, as to the conditions affecting them. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol at Helena, on Thursday, November 17th, 1921, commencing at

ten o'clock, A. M., present, Chairman Dennis and Commissioners Boyle and Ross, in the matter of the further extension of the order of April 28th, 1921, in I & S Docket, B-8, Rates on Cement, Sand, Gravel, Broken Stone, Crushed Stone, Broken Rock and Crushed Rock, this matter being before the Board upon the Complaint of various shippers and the State of Montana, and this proceeding being instituted by the initial motion of this Board, and a full investigation of the matters and things involved, having been had, carriers hereinafter named participating therein at public hearing in April 1921, and at further hearing on November 16, 1921, and the Board having this day filed of record its report containing its findings and conclusions therein, which report is hereby referred to and of this order made a part, and now this Board being fully advised in the premises.

IT IS ORDERED, That the Northern Pacific Railway Company, Great Northern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Oregon Short Line Railroad Company, Butte, Anaconda & Pacific Railway Company, Chicago, Burlington & Quincy Railroad Company, Gilmore and Pittsburgh Railroad Company, Minneapolis, St. Paul and Saulte Ste. Marie Railway Company, Montana Western Railway Company, Montana, Wyoming and Southern Railroad Company and White Sulphur Springs and Yellowstone Park Railway Company, be and they are, and each of them is, hereby notified and required to establish on or before December 15, 1921, and thereafter to maintain the following general distance schedule of carload rates, in cents per one hundred pounds, on sand, gravel, and broken or crushed stone, between all stations in Montana, for one and two line hauls, to-wit:

DISTANCES	One Line	Two Line
Not over 20 miles.....	2½	3½
Over 20 miles but not over 30 miles.....	3	4
Over 30 miles but not over 40 miles.....	3½	4½
Over 40 miles but not over 50 miles.....	4	5
Over 50 miles but not over 60 miles.....	4½	5½
Over 60 miles but not over 70 miles.....	5	6
Over 70 miles but not over 85 miles.....	5½	6½
Over 85 miles but not over 100 miles.....	6	7
Over 100 miles but not over 115 miles.....	6½	7½
Over 115 miles but not over 130 miles.....	7	8
Over 130 miles but not over 150 miles.....	7½	8½

IT IS FURTHER ORDERED That the above named carriers be and they are and each of them is, hereby notified, and required to establish on or before December 15, 1921, and thereafter to maintain local and joint carload rates, on cement, in cents per one hundred pounds, the same as in effect on August 31, 1920, between stations in Montana.

IT IS FURTHER ORDERED That in the case of rates on cement, established subsequently to September first, 1920, such rates must be reduced to the basis that would have prevailed had the rates been established before September 1, 1920.

IT IS FURTHER ORDERED That nothing herein contained shall in any wise modify or alter any rates on a basis lower than the rates established by this order.

IT IS FURTHER ORDERED That so much of the last paragraph of our order of April 28th, 1921, reading in part as follows to-wit: "That this order shall continue in force and effect to and including the 20th day of November, 1921, when the same shall expire without further action of this Board," shall be and the same is hereby cancelled and held void, it being intended hereby that the rates established by said order and in force within the State of Montana from May 20th, 1921 to November 20th, 1921, shall continue in force without change on or after November 20th, 1921, and until the further order of this Board, provided, however, that if carriers herein insist on charging, demanding and collecting the rates superseded by said order of April 28, 1921, during the interim from November 21 to December 14, inclusive, which is necessary for this order to become effective by the provisions of the statutes, this order shall not be a prohibition against such action during the period from November 21st to December 14th, 1921, inclusive; but it shall be a prohibition against any rates exceeding those herein continued and established on and after December 15th, 1921, until the further order of this Board.

IT IS FURTHER ORDERED That the rates hereby promulgated shall be made effective pursuant to the provisions of Sections 4376 and 4377, Revised Codes, Montana, 1907, as amended.

IT IS FURTHER ORDERED That the Secretary shall serve by mail a certified copy of this report and order upon each of the carriers named herein and that the same shall be in full force and effect forthwith according to its terms.

IN RE TRAIN SERVICE BETWEEN HELENA,
MONTANA, AND MARYSVILLE, MONTANA.

(Docket No. 796. Report and Order No. 326.)

(Hearing October 27, 1921. Decided November 26, 1921.)

Train Service—Branch Line—Earnings—Curtailment.

Where a carrier operating daily except Sunday branch line train service (mixed) shows that average freight and passenger revenues per month and per trip fail to approximate the cost of furnishing such service, and have so failed through the first nine months of the year 1921, it was authorized to substitute tri-weekly service until conditions improved to former level of earnings.

Application by the Northern Pacific Railway Company to curtail train service on its Marysville Branch by establishing tri-weekly instead of daily except Sunday service, as at present; granted.

Appearances: F. R. Bartles, Division Superintendent, for the Northern Pacific Railway Company; George T. McGee, for the protestants, E. G. Toomey, Counsel, for the Board.

Before: The Board, *en banc*, at Marysville.

By the Board: The Northern Pacific Railway Company owns and operates a branch line from Helena, Montana, to Marysville, Montana, a mining village 12.5 miles distant from Helena. Mining activities have, however, for several years been quite irregular in that district, and on August 12th, 1921, the carrier made application for an order of this Board authorizing the curtailment of train service on that branch, from daily except Sunday, to tri-weekly service.

The day following the filing of the application as above, the Barnes-King Development Company, and others, of Marysville, filed a protest against any reduction in service. Accordingly the railway company was notified that if it considered the matter of sufficient importance, a date would be set for public hearing; hence this hearing upon request of the carrier dated October 12, 1921.

The railway company bases its request upon alleged urgent necessity to economize in every way during the prevailing period of mining stagnation. The carrier supports its application with an exhibit showing the total tonnage and earnings of this branch line, also the average passenger revenue per trip for the year ended September 30th, 1921. The district served by this branch line is devoted to mining almost exclusively. Looking at the record for information as to the product of mines shipped out by rail a fair index of community activity we find that the average for nine months ended September, 1921, was but slightly more than **one car load per month**. The average passen-

ger revenue for the year ended September 30th, 1921, was \$226.67 per month; average freight revenue \$270.55 per month; average passenger revenue per trip \$8.69; average freight revenue per trip \$10.37. It will thus be observed that the traffic has indeed been light almost inconsequential. At the same time the cost to the carrier of furnishing daily except Sunday service has been \$81.08 per trip. The record shows that a reduction in service to tri-weekly will affect a saving to the carrier of \$604.69 per month.

It is quite natural that the community of Marysville should resent any curtailment of service. It feels that any deprivations now have been more than compensated for in the prosperous times of the past, and that common carriers have a service duty to fulfill at all times which removes them from reasons making for curtailment of private business. We are of the opinion, however, that no **hardship or loss** to the people will result from the adjustment of service herein proposed; that the carrier should not be restrained from operating its property in such a way as to conserve its revenues under conditions here existing; and that "reasonable service" will be afforded under the proposed tri-weekly schedule, until such time as business and other conditions warrant the restoration of the daily except Sunday train. Nothing herein is to be taken as an intimation that branch line revenues and expense are to be looked at exclusively in the determination of reasonable branch line service. The order goes down in response to the severe exigencies now attending the operation of this branch line and its force is to be measured by their continuance. An order will be entered accordingly.

ORDER.

At a session of the Board of Railroad Commissioners held in its office in the Capitol at Helena, Montana, commencing at 10 o'clock A. M., November 26, 1921, present Chairman Dennis and Commissioners Bovle and Ross, in the matter of the application of the Northern Pacific Railway Company for an order of this Board authorizing the curtailment of train service on its Marysville Branch, between Helena and Marysville, Montana, from daily except Sunday to tri-weekly service, this matter being before the Board upon the application of the Northern Pacific Railway Company, and a full investigation of the matters and things involved having been had, including formal public hearing at Marysville, Montana, on October 27, 1921, and the Board having this day filed of record its report containing its findings and conclusions herein, which report

is hereby approved, and by this reference made a part hereof, and now the Board being fully advised in the premises,

IT IS ORDERED That the application of the Northern Pacific Railway Company for the establishment of tri-weekly train service between Helena and Marysville, Montana, be and the same is hereby granted, to become effective on December 1, 1921, and shall so continue in effect until the further order of this Board.

IT IS FURTHER ORDERED That the Secretary shall serve by mail a certified copy of this Report and Order upon each of the parties hereto, and that the same shall be in full force and effect according to its terms.

IN RE PETROLEUM PIPE-LINES

(Docket No. 784 Report and Order No. 317)

(Hearing April 15, 1921 Decided May 11, 1921)

Pipe-lines—Common Carriers—Profession of Public Service—Tariffs—Ch. 8
Laws Extra Session, 1921.

Where, following the passage of Chapter 8, Laws, Extra Session, 1921, owners of two intrastate petroleum pipe-lines, respectively made unequivocal declaration of intention to come under the jurisdiction of this Board as common carriers of crude petroleum, they were taken at their word, and ordered to file tariffs, rules and regulations, Tariffs, etc., to be subject to approval, modification or abrogation by the Board.

General inquiry into the operation and practices of persons and corporations owning or controlling pipe-lines for the intrastate transportation of petroleum. Companies found to be common carriers and ordered to file tariffs and rules and regulations for approval or modification by the Board.

Appearances: H. P. Ferree, Secretary-Treasurer, for the Elk Basin Consolidated Petroleum Company; G. P. Jenkinson, Assistant to President, for the Mid-West Refining Company; C. W. Colgrove, for the Montana Independent Pipe Line Company; H. A. Schwartz, for the Hover-Schwartz Company; George Wiedeman and Quincy Scott, Secretary, for the Lewistown Chamber of Commerce; E. G. Toomey, Counsel, J. H. Bonner, Chief Engineer, for the Board of Railroad Commissioners.

Before: The Board, en banc, in Lewistown.

By the Board: By Chapter 8, Laws Extraordinary Session of the Seventeenth Legislative Assembly of the State of Montana, 1921, approved March 22, 1921, the Legislatively Assembly confided to this Board the regulation

and supervision of intrastate pipe-lines engaged as common carriers of crude petroleum, and companies owning or controlling petroleum pipelines and so conducting their business of purchasing and carrying petroleum as to come within the terms of the act as common carriers. Our law follows with more or less fidelity, Chapter 30, Laws of the Thirty-Fifth Legislature of Texas, 1917, and it is evident that it is constructed in the light of the opinion of the majority of the Supreme Court of the United States in *The Pipe Line Cases*, 238 U. S. 584, 58 L. Ed. 1459, 34 Sup. Ct. Rep. 956.

A public hearing was had at Lewistown, Montana, on the 15th day of April, 1921, for the purpose of giving all persons affected by the act an opportunity to present their respective interests, and at this initial hearing a wide latitude of inquiry and discussion was permitted.

The record now before us makes unnecessary any discussion as to the legal status of the one intrastate pipe-line (a four inch line) now in operation in Fergus County, Montana, and the additional intrastate line (a six inch line) now in course of construction, these lines being the only intrastate facilities in Montana. The owners of both lines have by their duly authorized representatives, made unequivocal declaration of their intention to come under the jurisdiction of this Board as common carriers of crude petroleum in accord with the provisions of Chapter 8, *supra*, and we take them at their word. There is a marked difference in the activities of the two corporations owning the pipe-lines. The corporation first in the field is engaged in the production of oil for production's sake, the pipe-line being installed primarily to transport petroleum from the company's wells, or wells controlled by it, or in which it has a substantial interest. The corporation now prosecuting the construction of the six inch line, is divorced, for the present at least, from any effort at production. Notwithstanding this difference in the character of the business carried on, it does not appear that there is now, or that there will be, any difference in the public profession of a common carrier pipe-line service by either company. All the pipe-lines in question are and will be owned and operated "for the transportation of crude petroleum to or for the public for hire."

Moving forward then, on the basis established by these explicit professions of public service, we shall require each carrier to file with this Board an express acceptance of the provisions of Chapter 8, Laws, Extra Session, 1921, its tariffs containing rates and charges for the transportation of crude petroleum, and such rules and regulations as it

has promulgated for the conduct of the business. Rates, rules, and regulations are, of course, subject to our approval and concurrence, and all may be modified or abrogated by this Board on petition by a person showing substantial interest in the subject, after hearing, and new standards erected in their stead. It is proper, in the first instance, however, to permit the operators to file their tariffs and accompanying rules and regulations, for this Board is not a proprietor, and the carriers should be indulged the initial presumption that their tariffs and rules will be reasonable. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol, at Helena, on Wednesday, the 11th day of May, 1921, commencing at ten o'clock A. M., present, Chairman, Dennis, and Commissioners Boyle and Ross, in the matter of a general inquiry into the rates, rules, regulations, and practices of persons, firms and corporations owning, operating or managing pipe-lines for intrastate transportation of crude petroleum, Docket No. 784, this matter being before the Board upon its own initial motion, and a full investigation of the matters and things involved having been had, the companies hereinafter named participating therein at public hearing, and the Board having this day filed of record its report containing its findings and conclusions which report is hereby approved, and by this reference made a part hereof, and now this Board being fully advised in the premises,

IT IS ORDERED That every person, firm, corporation, limited partnership, joint stock association, or business association of any kind whatever, owning, controlling, operating or managing any pipe-line for the transportation of crude petroleum within the State of Montana for any use or purpose, public or private, and all such persons and others enumerated in Chapter 8, Laws, Extra Session, 1921, and in particular, the Elk Basin Consolidated Petroleum Company, a Maine corporation, and the Montana Independent Pipe Line Company, a Delaware corporation, shall, on or before Wednesday, the first day of June, 1921, file with this Board, in book form, on sheets 8½ x 11 inches, all and singular the rates and charges now exacted or proposed for gathering, transporting, loading and delivering by pipe line, crude petroleum within this state, and for the use of storage and other facilities incident to such business, and in said book form

all and singular the rules, regulations, and practices now promulgated or proposed to govern said business in its public relations.

IT IS FURTHER ORDERED That each and every one of the persons and corporations above described and enumerated shall, on or before the 1st day of June, 1921, file with this Board a written acceptance of the provisions of Chapter 9, Laws of the Seventeenth Legislative Assembly of the State of Montana, Extraordinary Session, 1921, in the following form, to-wit:

ACCEPTANCE.

The _____ a corporation organized and existing under the laws of the State of _____, and now legally authorized to do business within the State of Montana, in consideration of the rights, benefits, and privileges conferred by the provisions of Chapter 8, of the Laws of the Extraordinary Session of the Seventeenth Legislative Assembly of the State of Montana, 1921, an act approved March 22, 1921, hereby expressly accepts, and agrees to, all and singular the provisions thereof, and the obligations imposed thereby.

In witness whereof, We, _____ and _____, the President and Secretary of said corporation, in its behalf duly authorized, empowered, and acting, to evidence the corporate act of acceptance of the provisions of said act, have hereunto subscribed our names, and caused the seal of the corporation to be affixed, this _____ day of May, A. D. 1921.

Attest: Official

Secretary

(Seal)

Name of Corporation

By _____

President.

By _____

Secretary.

(Or said acceptance shall be executed in accord with the by-laws of the corporation, if the above form is not sufficient).

There shall be attached thereto a duly authenticated copy of the resolution of the Board of Directors, accepting, for and on behalf of the corporation the provisions of Chapter 8, aforesaid, and authorizing the execution of the formal certificate of acceptance above.

IT IS FURTHER ORDERED That the Secretary of this Board shall immediately serve, by mail, a certified copy of this Report and Order upon each of the parties to this proceeding, and that the same shall be in full force and effect forthwith, according to its terms.

IN RE PETROLEUM TARIFFS

(Docket No. 784 Report and Order No. 318)

(Hearing April 15, 1921 Decided, June 4, 1921)

Petroleum Pipe-Lines—Common Carriers—Competitors—Rates.

Where two pipe-line companies operating as common carriers of crude petroleum in the same field, and directly competing for the carriage of same, filed different tariffs, one based on a rate of 15 cents per barrel, and the other on a rate of 32½ cents per barrel, neither company having operated as a common carrier under either rate for a sufficient period to warrant a fair rate prophecy, both companies were ordered to carry crude petroleum at 32½ cents per barrel on the ground that such rate, all things considered, more nearly approached that standard of fairness which entitled it to actual trial, than the 15 cent rate.

Applications by pipe-line companies for approval of tariffs containing rates and charges for transportation of crude petroleum; rates prescribed.

Appearances: Fred W. Freeman, H. P. Ferree, for the Elk Basin Consolidated Petroleum Company; C. W. Colgrove, for the Montana Independent Pipe Line Company; E. G. Toomey, Counsel, for the Board of Railroad Commissioners.

Before: The Board, *en banc*, in Helena.

In re Petroleum Pipe-Lines, Report and Order No. 317, 14 M. U. R. 137, this Board entered an order directing every person, corporation or business association of any kind whatever engaged in intrastate pipe-line transportation of petroleum, to file with the Board, on or before Wednesday, June 1, 1921, all and singular the rates and charges now exacted or proposed for gathering, transporting, loading, and delivering, by pipe line, crude petroleum within this state, and for the use of storage and other facilities incident to such business, together with the rules, regulations, and practices promulgated or proposed to govern such business in its public relations. On May 27, 1921, the Elk Basin Consolidated Petroleum Company filed its "Local Tariff" which contained a rate of fifteen (15) cents per barrel of forty-

two (42) United States gallons "for gathering crude petroleum oil from wells in the Cat Creek Field, Montana, within the territory of the Elk Basin Consolidated Petroleum Company's Gathering System, and transporting same to Winnett, Montana." On May 31, 1921, the Montana Independent Pipe Line Company filed its "Pipe Line Tariffs in Cat Creek Oil Fields", naming a rate of $32\frac{1}{2}$ cents per barrel of forty-two (42) gallons for "gathering crude petroleum in the Cat Creek field, transporting it to Winnett, Montana, and loading it in tank cars or containers," divided as follows: gathering 10 cents, transportation 15 cents, loading $7\frac{1}{2}$ cents. Both companies, and the two named are the only carriers engaged in intrastate transportation of petroleum, filed their rules and regulations, and likewise written acceptances of Chapter 8, of the Laws of the Extraordinary Session of the Seventeenth Legislative Assembly of the State of Montana, 1921, an act approved March 22, 1921.

We are asked, now, to prescribe reasonable rates for the service in question. Rate-making is always a prophecy, the accuracy of which depends upon a complete exposure and development of all existing relevant facts and the proper determination of the force to be assigned each fact or fact group in the construction of the rate schedule. In the instant case, there is very little evidence in the record (and we think that all facts now available are incorporated therein) which serves as a fact base for a rate prophecy. Available data are most imperfect, and for a good reason: neither company has been engaged as a matter of practice in the transportation of crude petroleum to or for the public for hire beyond a period of twenty days previous hereto. Indeed, explicit profession of such service, coupled with capacity to serve, does not antedate the middle of May, 1921. Manifestly, it is the actual offering of oil by producers for transportation, and transportation by the companies under actual market conditions which must determine to a very considerable extent the reasonableness of any rates to govern the traffic. Positive knowledge of investments and property values and assumptions concerning a "fair return" thereon are of little aid without the third factor of operating experience, nor will such known elements help at all in determining such third factor. Our action herein, then, must not be accorded even those qualities of relative finality which attend the disposition of the ordinary public utility rate proceeding.

On the facts now in our possession we do not find anything to justify a spread of $17\frac{1}{2}$ cents between the rates proposed by the carriers. Giving full force to the difference in their respective investments, to the added efficiency in

service which the Elk Basin corporation may offer at present because it is more nearly a going concern in the operation of its pipe line and perhaps possessed of a more experienced force, to the physical capacities of the two systems, to the terminal loading service of the Independent Company, in short, to every feature that distinguishes one company from the other, we are at a loss to discover in any one of these features, or in all of them aggregated, a basis for the rate spread which develops as a result of their independent filings. It now seems reasonable to indulge the presumption that both companies are bona fide competitors for carrying the crude petroleum of the Cat Creek field, and this being so, it must be remembered that the conditions under which they are operating are practically identical, so much so that a slight difference in the rate would work to prefer the carrier operating at the lower rate, if it would not actually destroy the carrier charging a higher rate. Assuming bona fide competition, free and unrestrained, equal ability to render service, and this seems plain at the present stage of oil production, the only essential difference between the two companies is their ability to sell their services, a personal factor with which we are not engaged. To sanction a difference in a rate made by public authority would be to ignore the reality of the Cat Creek situation.

Convinced that rates for each carrier should be the same, we have very little evidence, as noted above, to move us to a rational judgement as to what those rates should be. One thing seems fairly clear from the record, however, and that is that the 15 cent rate now proposed by the Elk Basin Consolidated Petroleum Company can scarcely be denominated "reasonable," if the company's pipe-line operations are to be divorced from its producing activities, and that is what we must do. The Secretary-Treasurer of the company testified at the April hearing that the inter-company charge at that time was fifteen cents per barrel, a "package charge added to the field price;" that the actual cost of transporting the oil was shown to be 14.98 cents per barrel, and that the fifteen cent charge did not include anything for taxes, or for a return on the investment, and yielded but \$34.20 above operating expenses from the time when transportation was commenced in August, 1920 to December 31, 1920. In other words, such a charge was a bookkeeping arbitrary adopted to meet operating expenses and depreciation of the pipe-line, which was simply a private facility of a group of companies engaged in unified production, transportation, refinement and sale of petroleum. The same witness was at pains to emphasize that the fifteen cent rate "is an inter-company charge, and that rate is entirely insufficient for a company

or business seeking any sort of profit," and again, that such rate was "inadequate" and "unreasonable." The Superintendent of the Elk Basin company's pipe-line was equally positive: "You keep charging the same rate (15 cents) and I don't think the line will ever make any profits."

Without dwelling on the implications fairly deducible from the proposal to extend what is an admittedly insufficient charge for private operations to public operations, this Board feels that the 15 cent rate is sufficiently condemned at its source, to warrant its rejection now as unworthy of trial. We shall adopt the 32½ cent rate for both companies not because we feel positive that it is fair, *per se*, but because it more nearly approaches that standard of fairness which entitles it to actual trial. If comparison of pipeline rates in oil fields characterized by the same conditions as obtain in the Cat Creek field, is of any value, it is noteworthy that the 32½ cent rate, amounting to .0171 per mile, is lower than rates for lines of approximately the same mileage in like Wyoming fields. For example, Osage field, .0213 per mile per barrel; Mule Creek field, .0178 per mile per barrel; Rock Creek field, .02 per mile per barrel.

We note that the regulations filed by the Elk Basin company provide as follows: The company "will receive crude petroleum for transportation when shipper or consignee has provided the necessary facilities for receiving said crude petroleum as it arrives at destination." Manifestly it may be impossible for a shipper or consignee to have tank cars or storage tanks available at Winnett to receive the oil "as it arrives at destination". A reasonable period, say five days, should be allowed within which loading facilities may be furnished, and as the rate approved *pro tempore* is constructed to cover temporary storage and loading service, the order will require the five day waiting period, after delivery of the crude petroleum to the company, to provide loading facilities, and the carriers must furnish storage facilities accordingly. This requirement is no more than that exacted of all common carriers of commodities.

Whatever may be the state of the petroleum market for Cat Creek producers, so far as competitive demand is concerned, and on this point the Board finds no necessity to express itself and, therefore declines to venture an opinion at this time, all the producers in the Cat Creek field should be assured of an equal opportunity to reach that market. Their situation emphatically calls for strict adherence to the principle framed in the brief expression, "the same rate for the same service". If variable rates were sanctioned, the pipeline with the lowest rate is bound to obtain most of the traffic, and if such line were allied with refining interests a

situation might be produced wherein the Cat Creek producer would be, in practical effect, denied the opportunity of reaching the market he desired. Nor is the effect altered by the fact that the refiner or buyer pays the transportation charge as long as the pipe-line companies are permitted to purchase as well as carry oil, as the laws of the state now seem to permit. The petroleum industry in Montana is a little more than a year old, and entitled to every proper encouragement. Large and powerful groups of capital are working alongside small and limited pioneers. The law aims to afford them all, parity of opportunity, and so far as the Cat Creek field goes, that is most readily accomplished by equalization of transportation rates. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana, held in its office in the Capitol, at Helena, on June 4, 1921, commencing at 2 o'clock P. M., present, Chairman Dennis, and Commissioners Boyle and Ross, in the matter of the application of the Elk Basin Consolidated Petroleum Company for approval of its Local Tariff naming a rate of 15 cents per barrel for the transportation of crude petroleum from the Cat Creek field to Winnett, Montana, and in the matter of the application of the Montana Independent Pipe-Line Company for approval of its tariff naming a rate of 32½ cents per barrel for the transportation of crude petroleum from the Cat Creek field to Winnett, Montana, these matters being before this Board upon the separate applications of said companies, filed pursuant to the terms of Report and Order No. 317, May 11, 1921, and a full investigation of the matters and things involved having been had, and the Board having this day filed of record its report containing its findings and conclusions herein which report is hereby approved, and by this reference made a part hereof, and now the Board being fully advised in the premises,

IT IS ORDERED That the application of the Montana Independent Pipe Line Company for approval of its said tariff, naming a rate of 32½ cents per barrel for gathering, transporting, and loading crude petroleum as therein stated, be and the same is hereby granted, and said tariff and the rules and regulations accompanying the same be, and they are hereby, approved, effective June 15, 1921, until the further order of this Board.

IT IS FURTHER ORDERED That the application of the Elk Basin Consolidated Petroleum Company for approval of its said tariff, naming a rate of 15 cents per barrel as aforesaid, be and the same is hereby denied, and said tariff rejected.

IT IS FURTHER ORDERED That the Elk Basin Consolidated Petroleum Company, shall, on or before the 15th day of June, 1921, file with this Board a supplement, to be known as Supplement No. 1 to Tariff No. 1, naming a rate of $32\frac{1}{2}$ cents per barrel of 42 United States gallons for gathering crude petroleum in the Cat Creek field, transporting the same to Winnett, Montana, and loading at Winnett, Montana, within five days after receipt of the crude petroleum for transportation, and the same shall be effective from June 15, 1921, until the further order of this Board.

IT IS FURTHER ORDERED That from and after the fifteenth day of June, 1921, the lawful rate for gathering crude petroleum in the Cat Creek field, Montana, transporting it to Winnett, Montana, and loading it into facilities furnished by the shipper or consignee at Winnett, Montana, within five days after delivering same to the pipe-line companies for transportation, shall be, and the same is hereby fixed at $32\frac{1}{2}$ cents per barrel of 42 United States gallons, and every company so engaged in said field shall charge said rate and no other, until the further order of this Board.

IT IS FURTHER ORDERED That each of said corporations shall file with this Board not later than the 15th day of July, 1921, and thereafter not later than the 15th day of each month, a statement under oath, showing for the preceding month, the total number of barrels of oil transported through its pipe-line, the number of persons or corporations offering said oil for transportation, the average monthly field price of said oil according to grades, if any, the number of barrels purchased by each company from other companies or persons and transported, the number of barrels transported from the company's own wells, and the number of barrels transported for delivery to persons or corporations not allied in any manner with the persons and corporations owning, operating, managing or controlling the respective pipe-lines.

IT IS FURTHER ORDERED That each carrier shall post, not later than June 15, 1921, and thereafter keep properly posted and available in a conspicuous place at each end of its pipe-line and in each of its offices or stations, its tariffs and regulations as approved by this Board.

IT IS FURTHER ORDERED That the Secretary shall serve by mail a certified copy of this report and order upon each of the parties hereto, and the same shall be in full force and effect forthwith.

In the Matter of the Application of the Elk Basin Consolidated Petroleum Company for a Rehearing in Docket No. 784, Petroleum Tariffs Governing the Transportation of Crude Petroleum from the Cat Creek Field to Winnett, Montana.	}	Notice of Public Hearing at Lewistown, Montana, June 30, 1921, Docket No. 784, and Order Therein.
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Pipe-Line Rates—Rehearing—Trial Pending Rehearing.

Rates prescribed in In Re Petroleum Tariffs, Docket No. 784 ante, page 141, ordered to remain in full force and effect pending rehearing therein.

TO WHOM IT MAY CONCERN:

Notice is hereby given by the Board of Railroad Commissioners of the State of Montana, that the Elk Basin Consolidated Petroleum Company having formally filed with this Board its application for a rehearing of the matters and things involved in Docket No. 784, "Petroleum Tariffs governing the rates and charges for pipe line transportation of crude petroleum from the Cat Creek Field to Winnett, Montana," and it appearing therefrom, and from additional documentary evidence filed therewith, that the issues and matters in said Docket No. 784, should be re-examined, and additional testimony taken at a full public hearing whereat all persons concerned may have an opportunity to be heard and to cross-examine; and in order that all relevant and existing facts connected with said Docket No. 784 may be fully exposed, particularly matters developing since the date of the last hearing herein, namely, April 15, 1921, and the Board now being fully advised in the premises:

ORDER NO. 318-A.

IT IS THEREFORE ORDERED That a public hearing be held in the City of Lewistown, Montana, before this Board of Railroad Commissioners, on Thursday, the 30th day of June, 1921, commencing at 10 o'clock a. m., in the Court House of Fergus County, in the matter of the operation, conduct, rates, rules, regulations, practices, and pipe-line system property values of every person, firm, and corporation, operating or managing any pipe-line for the transportation of crude petroleum from the Cat Creek Field in Fergus County, Montana, to Winnett, Montana, and, in particular the matter of the operations of the Montana Independent Pipe-Line Company and the Elk Basin Consolidated Petroleum Company.

IT IS FURTHER ORDERED That, at the time and place herein stated, any person, or the representative of any firm,

corporation, or other business organization, may appear in person or by counsel, and offer any testimony or present any evidence pertinent to the matters and things involved.

IT IS FURTHER ORDERED That, pending such rehearing, and the decision thereon by this Board, the rates, rules and regulations promulgated by this Board in Report and Order No. 318, Docket No. 784, June 4, 1921, shall remain in full force and effect, and shall be and constitute the only lawful rates, rules, and regulations in the premises, until the further order of this Board.

IT IS FURTHER ORDERED That, the Secretary of the Board shall serve this notice personally and by publication according to law.

IN RE PETROLEUM PIPE-LINES AND TARIFFS (On Rehearing)

Docket No. 784 Report and Order No. 324)

(Hearing April 15, 1921. Decided August 6, 1921)

Pipe-Lines—Rates—Rehearing.

1. The whole subject of pipe-line transportation of crude oil from the Cat Creek Fields, in Fergus County, to Winnett, Fergus County, Montana, examined on rehearing, rates already prescribed reaffirmed, and fair trial of such rates, under actual operating conditions, directed.

Pipe-Lines—Common Carriers—Competitors—Rates—Chapter 8, Laws, Extra Session, 1921—Policy.

2. Since the Pipe-line Act, Chapter 8, Laws Extra Session, 1921, permits a common carrier of crude petroleum to be engaged in the business of purchasing and selling crude petroleum, as well as carrying the same, this condition invites the exercise of more than ordinary solicitation in the prescription of rates as a matter of public policy to insure healthy competition, in view of the further provision of the Act allowing and fostering competition in such businesses, and the actual market conditions prevailing whereby one carrier, allied with the dominant American oil group, threatens a monopoly in the field by virtue of its buying and selling privilege and trade relation.

Pipe-Line Rates—Competition—Trial of Competitive Ability.

3. Where a competitive situation has become established, which it is the policy of the law to encourage, this Board is duty bound to find a single remunerative rate which will permit both carrier competitors the same opportunity to reach the traffic offered, but the weaker competitor is not entitled as a matter of right to use such rate as a shield to save it from honest effort to obtain traffic, or to have it continued for such a length of time as utterly to prove or disprove the carrier's rosy hopes for better days. The rate must prove its fitness under conditions of common carriage normally obtaining.

REHEARING, JUNE 30, 1921.

Rehearing of the subject of pipe-line rates, Docket No. 784, upon the application of the Elk Basin Consolidated Petroleum Company. Order of June 4, 1921, fixing rates at 32½ cents per barrel, affirmed.

Appearances: John D. Clark, James G. Stanley and S. H. Keoughan, for the Elk Basin Consolidated Petroleum Company; John D. Clark, for the Midwest Refining Company; C. W. Colgrove, for the Montana Independent Pipe Line Company; DeGay Stivers, for the West Dome Oil Company; Julius C. Peters, for the Homestake Oil Company; E. B. Hall, for the Montacal Oil Company; Herbert A. Hoover and Harry H. Schwartz for the Hoover-Schwartz Company and the Arro Oil and Refining Company; Wellington D. Rankin, Attorney General, E. G. Toomey, Counsel, for the Board.

Before: The Board, *en banc*, in Lewistown.

By the Board: On June 16, 1921, following our decision in *Re Petroleum Tariffs*, Report and Order No. 318, June 4, 1921, 14 M. U. R. 141, whereby there was established a rate of 32½ cents per barrel for pipe-line transportation of crude petroleum from the Cat Creek field to Winnett, Montana, the Elk Basin Consolidated Petroleum Company, a party to the original proceeding, filed a petition for a rehearing upon the subject of the rates to be charged for the pipe-line service. The principal ground relied on to induce re-opening of the matter is found in these allegations of the petition for rehearing:

“(1) That at the time of the hearing of the above entitled matter on April 15, 1921, the Elk Basin Consolidated Petroleum Company had not been able to correlate or put in tangible form the data in relation to the revenues or operating expenses, and that at the said hearing no evidence whatever was produced in relation to the costs of operation or the profits to be derived therefrom during the months of January, February, March or April; that the information and data in relation to the operations or profits from said pipe line are now at hand and are herewith presented as a part of this application, and appear as Exhibit ‘A’ hereto attached, and made a part hereof.

“(2) That during the months of January, February, March and April, 1921, 351,399.70 barrels of crude petroleum were gathered, transported and delivered at a rate of 15 cents per barrel, making a total revenue of \$52,709.96; that during said months the total costs of operating the said pipeline, including costs of gathering, transporting and delivering, and all other costs of every kind and character, amounted to the sum of \$32,974.34, and

that the average profit per barrel derived from the operation of said pipe-line was during said months, exclusive of federal and other taxes, .05617c, or at the rate of 28 per cent per annum on the total investment from said pipe-line.

"(3) It should be borne in mind that market and field conditions have thus far prevented utilizing the full capacity of petitioner's said pipe-line in excess of 60 per cent thereof, and that when production is available for running a greater amount than 60 per cent of such capacity, that the resultant profits will be greatly in excess of the figures hereinabove given, while the fixed charges will remain practically the same as at present."

Paragraph 4, of the petition alleges that the oil industry is in a demoralized condition due to an excessive production of crude petroleum over consumption at an annual rate of over 131 million barrels in the United States. "That any increase in the pipe-line rate must inevitably fall upon and be borne by the producer of crude oil in the Cat Creek field," and that to add any additional operating costs to the producers therein "will result in a complete demoralization of the industry there, if not an absolute suspension of operations, and will especially be a great hardship upon the small producer."

As we noted in *Re Petroleum Tariffs*, 14 M. U. R. 141, ante, there was very little evidence in the record at the date of that decision, June 4, 1921, to serve "as a fact base for a rate prophecy," for the reason that neither of the carriers involved had been engaged as a common carrier of crude petroleum beyond a period of twenty days previous to June 4, if at all; the very essential element of actual operating experience in a public capacity was lacking, and this condition, of course, most seriously militated against, if it did not preclude, accurate rate-making. Wherefore, we cautioned that our action then "must not be accorded even those qualities of relative finality, which attend the disposition of the ordinary public utility rate proceeding." The petitioner, whose representatives at the April hearing were positive that a rate of 15 cents per barrel for common carriage would be unreasonably low and entirely insufficient, assumes responsibility for failure to present the complete proof at that hearing, which it now insists demonstrates that the 15 cent rate is reasonable and fully compensatory. The witnesses now offered by petitioner were not present at the April hearing (nor were the witnesses at the April hearing offered on this rehearing), and they submit the pipe-line operations from January 1, 1921, to May 1, 1921, as an actual fact basis

to prove their contention as to the reasonableness of the 15 cent rate, arguing that the experience from August, 1920, through December 31, 1920, is not a safe criterion because the pipe-line was not, then, a going concern. We accept the statement that the evidence of operations succeeding January 1, 1921, was not available in April, though Petitioner does not show why it could not be produced then. If this were a judicial proceeding, the petitioner might not be relieved of its fault on such a showing. Desiring, however, to develop a record containing all of the facts relevant to the problem, if that were possible, realizing the meager character of the April proof, believing that the brief experience had since April 15, 1921, the date of the first hearing, might afford some data indicative of the forces at work, and accepting petitioner's allegations in the matter of new and additional evidence as worthy of consideration, we ordered rehearing and the same was had at Lewistown on June 30, 1921.

The rehearing has served to expose, in very plain terms, the circumstances surrounding the operation of the two pipe-lines involved, the various forces affecting their function as common carriers, and the market influences and producing policies attending the offering of crude petroleum for transportation. Some factors not clear in April, because not then fully matured, are now revealed and are helpful in making disposition of the present case; but as will presently appear, satisfactory rate data are lacking. There is little or no fact dispute in the record as respects the ordinary elements of rate-making, i. e., plant value, revenues and expenses of pipe-line operation, and while the progress of depreciation (more strictly speaking, plant amortization) is debated, as opinions vary on the life of the field, both carriers are agreed that the rate of depreciation should be high and the rate of return sufficiently liberal to compensate for the unusual hazards involved in the undertaking. The controversy rages about motives, policies, market advantages and influences, and how far we may or should take notice of these things, in the administration of Chapter 8, Laws Extra Session, 1921, is the difficult question here.

The following facts, by us separately narrated as they affect each carrier and each group of producers, plainly appear and must be kept in view at all times in this proceeding:

I

Position of the Elk Basin Consolidated Petroleum Company.

During the spring and summer of 1920, following the first substantial oil discovery in February of that year, and when it became evident that the production of the Cat Creek field was of marketable proportions, the Midwest Refining

Company and the Frantz Corporation commenced negotiations looking to the purchase by the former of the oil from the latter's properties in the Cat Creek field, the Frantz Corporation then being the only substantial operator in the field. On July 31, 1920, the Midwest Company communicated an offer to the Frantz company whereby the refiner agreed to purchase all of the oil in the field at "the Elk Basin price," the highest prevailing in the Wyoming fields, and the producer was to "construct a pipe-line with necessary pumping equipment and deliver the oil to receiving tanks . . . at Winnett," for which service the Midwest agreed to pay the Frantz company 15 cents per barrel. The offer was accepted and the Frantz company commenced the construction of a two-inch line from the field to Winnett, when its holdings were secured by the Elk Basin company and the latter finished the construction of the two-inch line. Subsequently the Elk Basin company installed the present four-inch line, and, it seems, the 15 cent rate for that line was evolved anew and without reference to Frantz-Midwest negotiations, from conferences, between Midwest and Elk Basin officials, largely influenced by S. H. Keoughan of the latter company. On the stand Mr. Keoughan disclosed that the 15 cent rate was settled upon because it was felt that a higher rate voluntarily established might be seized upon by the Illinois Pipe Line Company, in the event it entered the Montana field or other western fields where the Elk Basin was interested, to compel increases in existing rates or charges at the rate of a cent a mile or more. It is clear, then, that the 15 cent rate was originally developed without any regard to the elements ordinarily determinative of reasonable rates for common carriers of crude petroleum, and necessary, under the law as developed by the decided cases, to any consideration of the subject, for, having been fixed in advance of construction and operation of the utility, it was impossible that the actual cost of the property, not to mention its fair value, or its operating expenses, or oil available for carriage, could be known—*Smyth v. Ames*, 169 U. S. 466. In the words of the Elk Basin's Counsel, "it was a price mutually agreed upon in advance of the construction of the line and accepted by the prospective constructor as an adequate and compensatory rate." And in his testimony counsel admits that the only elements known to the company at the time the rate was made, and which would have a bearing thereon, were (a) distance from Cat Creek to rail terminal at Winnett, and (b) character of the oil. If such a rate should prove compensatory, that result would be wholly accidental. The record will not admit of the inference that the 15 cent rate when formulated in 1920 was made with a view

to possible pipe-line competition, for extent of the new field was then too uncertain to warrant serious consideration by any one of a pipe-line other than as a plant facility. The record may very properly admit of the inference, however, that the 15 cent rate was established with a view to cutting as low as possible the returns on account of the Federal transportation tax of eight per cent upon the rate charged for transporting oil. Counsel says that the additional tax of \$1,400 per month, which would flow from the 32½ cent rate, "is an adequate reason for our not wanting to raise the rate."

The Elk Basin's line remained a plant facility until the company filed its written acceptance of Chapter 8, Laws Extra Session, 1921, with this Board on May 27, 1921. As a plant facility it was not available as an instrumentality of carriage to producers disassociated with the company. Oil was accepted for transportation only when sold to the Elk Basin company, in the field, under purchase contracts of one year or more which fixed the price as posted by the Elk Basin company in conformity to the prevailing market for Elk Basin (Wyoming) crude. As a matter of corporate policy, this company makes no decided effort to enter the pipe-line business. To quote again from the opening statement of counsel:

"We are not in the business. We don't want the business. We are going to leave the construction of pipe-lines, so far as we are concerned, to the pipe-line companies who are familiar with the business and who are able to finance the lines and can operate them economically and efficiently and always deliver the oil through, and we expect the pipe-lines to be constructed in the State of Montana by the pipe-line companies and we expect to pay them their tariff for transporting the oil which we purchase and produce through those lines, and we expect those tariffs to be based, to some marked degree, upon the tariffs in the Cat Creek field, which is the first one where public authority has found it necessary to fix a rate.

"So we are interested in seeing that the pipe-line rates as a class are not exaggerated in this state, because we expect to pay millions of dollars upon pipe-line tariffs."

And again:

"While we accept the Montana law, while we accept voluntarily the obligations of that law, we are not soliciting common carrier business, and we hope nobody will ask us to carry a barrel of oil in that respect."

Up to this time, and save for a minor exception, the Elk Basin company has not transported a barrel of oil as a common carrier, not because it has refused so to do, but because none (with the single exception mentioned) has actually been tendered to it for transportation. The title of almost every barrel of oil carried passed to the carrier before transportation was commenced. Hence it appears that there is not offered us now any evidence of the company's operation as a common carrier. The June hearing develops nothing different from the April hearing in this respect. A statement filed by the Elk Basin company under the provisions of Order No. 318, *supra*, covering pipe-line operations for the month of June, 1921, shows that 108,481.70 barrels of crude were transported during June, of which 80,566.20 barrels were **purchased** from companies other than the carrier, while 27,915.50 barrels were carried from the Elk Basin company's own wells. No producer or owner of crude petroleum offered or tendered oil for transportation during June.

The Elk Basin's witnesses put the production of the Cat Creek field in June at about 3,700 barrels daily, of which Elk Basin and Midwest take approximately 3,500 barrels under the purchase contracts mentioned. The residue is sent to the Independent company's storage tanks or used in the field. It is plain that the companies mentioned substantially control the field. Their admissions are candid:

“Q. At any rate there is a very small quantity of oil under present conditions remaining to be offered to the independent pipe-line?

A. That is correct. That is why I said that I doubted whether any rate, even a very high rate, would show a profit in that oil.

Q. As a buyer of oil, can you tell us if there is any real bona fide competitor for the oil?

A. We haven't met any. You mean in Cat Creek?

Q. In Cat Creek.

A. No.

Q. If the Midwest, the Elk Basin and allied subsidiary concerns issued an order to cease buying oil from Cat Creek field, do you think that by their concerted action they could shut down field operation?

A. I think it would inevitably do so, shut it down.

* * * * *

Q. That condition results from the fact that there is but one great oil taker in the country, one great oil market?

A. That is the reason.

* * * * *

Q. In view of your ownership in fee of the acreage in Cat Creek, and further in view of your purchase contracts, is there any reasonable possibility for the independent pipe-line acquiring, say, 25 per cent of the offered oil of the Cat Creek field within the next five years?

* * * * *

A. Right now there is no possibility of ever getting that percentage, unless we voluntarily turn oil over to them to transport which we can transport through our own line."

And it is equally clear that this control of production determines to a very great extent, if not in absolute fashion, the compensatory character of any rate, for the per barrel transportation costs decrease as the number of barrels of oil carried increases. From the vice-president of the Elk Basin company:

Q. Don't you think that the independent pipe-line company can be a success in the Cat Creek field?

A. It can if it can get the crude. If the crude is there and they have got a market for it they can be a success."

From the executive officer, and a director, of the Midwest company:

"Q. Don't you believe that a 15 cent rate would prevent the independent pipe-line from operating?

A. I don't think, since you have asked me, that the independent pipe-line can operate at a dollar rate.

Q. You are confident that it couldn't on a 15 cent rate at any rate?

A. Very confident.

Q. You are also confident that it couldn't operate on a rate of less than 32½ cents?

A. I don't see how it can.

Q. Yes.

A. With very much less than that.

Q. Where would you say that it could operate? At about what point? Where would your best estimate place it?

A. I would say up to 75 cents a barrel.

Q. About 75 cents a barrel. That is based upon the present available oil?

A. Prospective available production.

* * * * *

Q. Increase in well and increase in field, naturally you would not believe that the Board would be justified in reducing it below the amount fixed so far as that pipe-line is concerned, from your experience in the oil business?

A. I don't know what the Board would find proper. Naturally there are certain points at which an imprudent utility has got to operate without a profit.

Q. What do you mean by an imprudent utility?

A. A street car line in a town which won't furnish traffic; a second pipe-line in a field that is already furnished with pipe-line capacity."

The Elk Basin's four-inch pipe-line has a present capacity under 550-650 pounds pressure of 5,200 barrels of oil each 24 hours, and perhaps 6,500 barrels under a thousand pounds pressure.

The investment in the utility, up to and including April 30, 1921, is placed by the Elk Basin company at \$312,891.50, and subsequently to the hearing original vouchers were exhibited to the Board, proving every item of that aggregate. Depreciation accrued to that date and provided for each month is put at \$17,457.48, leaving \$295,434.02, as the original cost—actual investment—less depreciation. It seems clear that the line and attendant units were built economically, and that the last figure might be considerably expanded if customary intangibles were added. In this connection it is noted that the petition for rehearing alleges profits for the first four months of 1921 at the rate of 28 per cent per annum. If the investment of \$312,891.50 is taken as the rate base, and the average annual earnings computed by multiplying the average of the four months' earnings, \$4,933.90, the annual return will be about \$59,206.80, or at the rate of 19 per cent per annum on such rate base. Further, the company's expense figures ignore entirely the very substantial items of federal and state taxes, amounting to considerably more than \$1,000.00 per month. When deductions for these items are made, there is no possibility, on present oil tonnage, of making 28 per cent per annum; fifteen per cent seems to be the most generous concession that can be made on the company's liberal figures.

To the extent that corporate relations have a bearing on the rate question, it should be noted that the Midwest Refining Company, unquestionably the dominating refining factor in Montana, Wyoming, and also the entire Rocky Moun-

tain region, is controlled by the Standard Oil Company, the opportunity for control being characterized by Mr. Clark as "complete and absolute." It seems that the Midwest, as a corporation, owns less than three per cent of the stock of the Elk Basin company, while stockholders of each corporation individually own shares in the other, the extent of this ownership not now appearing. The Elk Basin company, as the record shows from the testimony of its representatives, has always operated in rather close co-operation with the Midwest. Both of these companies were represented at the hearing by the same counsel.

II.

Position of the Montana Independent Pipe Line Company.

This company entered Cat Creek field in the spring of 1921. At the time of the April hearing its lines, pump houses, etc., were in course of construction and it was not until the first day of June, or thereabouts, that the company commenced to receive oil in its field storage tanks. When this company filed its pipe-line tariff on May 31, 1921, it had never transported a barrel of oil as a common carrier, and the record shows that up to this time not a barrel of oil has been forced through the pipes from the field to Winnett for any purpose, either for testing the line, for the carrier's ownership account, or as a transportation service to others. The actual investment in the utility was not accurately known until the middle of July, or thereafter, and we have never been furnished with a statement of operating expenses, if there have been any. It is as apparent then, in the case of this independent company, as in the case of the Elk Basin company, that its proposed rate (the 32½ cent rate) was constructed without reference to the ordinary factors governing the making of rates for public utilities and wholly in advance of any operating experience. The secretary of the Independent company, Mr. C. W. Colgrove, who has appeared for it in all proceedings before this Board and who is the promoter of the enterprise, testified as follows:

"I am totally inexperienced as far as pipe-lines are concerned; for that reason I sought the advice of a man who was experienced."

On being asked, "How did you arrive at this 32½ cents," Mr. Colgrove answered:

"In conference with Harry Pennington, formerly chief engineer of the Texas Company."

"Q. Have you any figures?"

A. I took his advice only. He is a man who is very experienced in pipe-line matters."

The record does not show what elements Mr. Pennington considered in evolving a rate for the Independent pipe-line, nor whether he had any first-hand knowledge of the Cat

Creek field. The language just employed with reference to the Elk Basin company, viz., "Hence it appears that there is not offered us now any evidence of the company's operation as a common carrier. The June hearing develops nothing different from the April hearing in this respect," applies with the same force to the Independent company's operations.

In contrast to the corporate policy of the Elk Basin company, the Independent company professes that a common carrier pipe-line service is its chief concern, and principal business; indeed, it is given out that the rendition of such service is its reason for being. The Board was informed in June, as well as in April, that the Independent was not a purchaser or refiner of crude petroleum; that it would, if necessary, to secure a market for persons offering oil to its line for carriage, buy such oil "as a matter of accommodation to the producer," paying therefor twice a month. It appears that in May the Midwest Refining Company offered to purchase oil from the Independent company "at Winnett, Montana, in our tank cars, at the field price plus transportation charges as fixed by the Montana State Railroad Commission and war tax on such transportation charge." The oil was to be sold to the Midwest "in batches of from 10,000 to 25,000 barrels as may be agreed upon from time to time." This offer, it seems, was modified, if not actually revoked, by the Midwest after the receipt of our Report and Order No. 318, on the theory that if it purchased at such a price it would have to cut the price of crude accordingly, and this, the officers say, the company hoped to avert. At any rate the offer is not in force. The Independent seems confident of an open and active market, for those who offer crude to it for transportation.

As a further contrast to the position of the Elk Basin company with its own wells and purchase contracts for the production from wells owned or controlled by others, and resulting naturally from the Independent company's policy in confining its activities solely to the transportation of oil, the latter has no assurance whatever of a substantial share of the Cat Creek production. As in the case of the other carrier, oil tonnage is absolutely necessary to its life. Up to August 1, however, the Independent Company had received but 3,500 barrels in its storage tanks, not enough to fill the line from the field to Winnett.

The Independent company's six-inch line has a present capacity, under 750 pounds pressure, of 13,600 barrels of oil each 24 hours, and perhaps a maximum capacity of 15,000 barrels. The investment in the utility up to the date of this decision is said by the company's officers to be \$417,-476.51. No vouchers are submitted in support of the fig-

ures. We note what seems to be, when unexplained, an excessive figure for "organization and administrative," \$83,650.00, and that the sum of \$50,000.00 is included in the above total as the "estimated cost of five miles of pipe-line extension, including storage tanks and auxiliary pumping station to River part of field". We do not understand that this project has been incepted at all. If property is not used or useful, it must be excluded from the rate base.

From a corporate and stockholding standpoint there is no evidence in the record to show that the Montana Independent Pipe Line Company is allied or associated with any other group of capital devoted to the production, transportation, refining, or sale of petroleum.

Depreciation.

Obviously, the depreciation, or, more strictly speaking, the amortization charges for these pipe-lines, necessarily and to a very great degree affect the matter of rates. When the field is exhausted, or when production approaches the stripping state, the pipe-line system in place is valueless, or at least of very little use. There may be considerable salvage, or there may be little or none, depending on the condition of the units when the field is abandoned, the cost of removing them and the cost of re-establishing them elsewhere, if that is feasible, or their salvage may depend on their market value as junk. If customary rate-making principles are to apply—and no one suggests otherwise—an annual amortization charge must be set up which will, at the end of the life of the Cat Creek field, equal the value of the used property when new, less salvage. This is the rule for utilities whose construction and operation depend strictly on the natural supply of a given product. (In re Baker Natural Gas Utility, 14 M. U. R. —). This charge is arrived at by dividing the probable life of the field, in years, into the fair value of the depreciable property in service, with deductions for salvage from the fair value aggregate. The important question then is—What is the probable life of the Cat Creek field? At the April hearing there was more or less unanimity of opinion that the field was short-lived, the majority of estimates varying from five to eight years, though some extremists believed that a five-year period was too long. At the June hearing the vice-president of the Elk Basin company testified that, in his opinion, the Cat Creek field would be producing oil, "not in great quantities," in 20 years, that the present rate of production would continue for five years, and that at the end of ten years probably 2,000 barrels a day or over would be brought to the surface. No other witness seemed willing to venture an opinion that the life of the field would exceed ten years, unless oil was found in com-

mercial quantities in the lower sands; on such an assumption it was thought the twenty-year estimate was warranted. The Elk Basin company is now making a depreciation charge of ten per cent per annum, or about \$2,500 per month. The Independent company has submitted no figures on this score.

Attitude of Producers.

The producers in the Cat Creek field are divided into two groups—(a) those whose product is purchased by the Elk Basin company under purchase contracts of one and two years' duration, or whose product is owned either in whole or in part by that company under lease arrangements; and (b) those who have refrained from selling their product to the Elk Basin company and have sought a so-called independent market, stored their crude or refined a small part of it in the field, or sold some for fuel oil. The first group associated in interest for the time being with the Elk Basin, and relying on that company's ability to carry oil at 15 cents per barrel, feels that there is not now any necessity or any reason for a second pipe-line in the Cat Creek field; that, under the provisions of the common carrier act, the line of the Elk Basin company, being of sufficient capacity adequately to serve the field, may be compelled to obey its public obligation to carry indiscriminately, and there is no probability of any producer suffering by reason of its association with the country's most powerful group, or the fact that it is engaged in the production of oil. They assert that the Independent line, coming after the Elk Basin's line and before there was any assurance of greatly increased production in the field, is a premature and unjustified facility and that the producer should not be made to bear high pipe-line rates to protect the erroneous judgement of the promoters of such a utility.

The second group of producers, including a number now engaged in the construction of an independent refinery at Lewistown, is emphatic in its assertions that the presence of the independent line is indispensable to successful operation, and, it seems, these operators are willing to pay "any rate necessary to keep an independent pipeline in the field." At least that is the testimony of their principal member and chief representative. Though not able to indicate with precision the difficulties which the existence of a single line owned by the Elk Basin company would put in their way, they feel certain that, notwithstanding professions and pretenses, that company would not operate such line unselfishly, that indiscriminate service would not be assured, and that the fact that the carrier is also a producer and allied with the great refiner of the Rocky Mountain region who controls the new field would inevitably prejudice their operations.

The Statute.

The problem here presented would be a comparatively simply matter if all pipe-line companies were in fact absolutely divorced, or were compelled by law to be absolutely divorced, from any other activity than the carriage of crude petroleum to or for the public for hire. But our statute permits the carrier to be engaged in the business of purchasing and selling crude petroleum; indeed, there is no prohibition on the activities of the owner of the pipe-line, whether a corporation or a natural person **save that the line be operated as a common carrier**, and such owner, in addition to operating the pipe-line, may at the same time be a producer and a refiner of oil. The pertinent provisions of the act are found in Section 2, following:

“Section 2. It is declared that the operation of these pipe lines, to which this Act applies, for the transportation of crude petroleum, in connection with the purchase or purchase and sale of such crude petroleum, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe-line of the class subject to this Act to transport the crude petroleum so bought or sold shall not be conducted, unless such pipe-line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the Board of Railroad Commissioners of Montana. It shall be the duty of the Attorney General to enforce this provision by injunction or other adequate remedy.”

In this case the pipe-line owner, who follows the statutory advantage, is the principal producer in Cat Creek and is at the same time affiliated with the dominant group in the American oil market. Thereby opportunity is afforded that group to influence pipe-line policies with the oppressive consequences to competitors that the history of common carrier participation in business other than that of carriage has always shown. This condition invites the exercise of more than ordinary solicitation, as a matter of public policy, to insure healthy competition, if competition is to be regarded as at all important. Without the Independent line in being and function, the Elk Basin company would enjoy a monopoly of transportation. Unless we read the pipe line

act wrongly, the legislature intended to foster competition in pipe-line service, and, as its agent, this Board must prosecute that policy. Section 3, provides that **"any person, firm, limited partnership, joint stock association, or corporation may acquire the right to construct pipe-lines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state, by filing with the Board of Railroad Commissioners of Montana an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the rights so acquired it shall be and become a common carrier pipe-line, subject to the duties and obligations conferred or imposed in this Act."** Had the legislature considered that one pipe-line between two given points would best serve the interests of producers affected, in other words, had it settled on a policy of regulated monopoly instead of inviting any or all entrepreneurs to enter the field, it would have endowed this Board with power to grant certificates of public necessity and convenience, and thereby avoided the possibility of duplicate utilities and unnecessary facilities. But the legislature, in keeping with its policy exemplified up to this time in the case of electric, water, gas and the other more common utilities, has not thought it wise to displace competition.

We are convinced then that we are duty-bound to find a remunerative rate which will permit both carriers the same opportunity to reach the traffic offered. Owing to the identity of the conditions of carriage when only the common carrier operations of the two companies are considered, and their readiness for like and contemporaneous service, it goes without saying that there must be a single standard rate on both lines for the carriage of crude from the Cat Creek field to Winnett. (See in re Petroleum Tariffs, 14 M. U. R.—). This means some disregard of exact rate-making; since the investment in each line differs materially and a rate constructed with mathematical precision for an investment of \$313,000.00 would not meet the requirements of an investment of \$417,000.00. Our judgment must be exercised between two extremes, i. e., the rate must not be so low as to ruin the greater investment of the Independent company and yet not so high as to put a premium on inefficiency if that exists. Beale and Wyman in their work on Railroad Rate Regulation have discussed the proposition with reference to rail carriers in words applicable to the instant case:

"When a competitive situation has become established by presence of various competing lines performing the same service to the community, it tends to become settled between the competitors what shall be the standard rates and what differ-

entials shall be allowed from these rates. The standard rate might be that established by the shortest and otherwise best located road, but it would not be fair in reducing rates all over the territory involved to reduce all rates to the lowest margin of profit fair to that particular road for other roads could not meet that rate without ruin, it may be. On the other hand it would be bad public policy to permit as an artificial standard what the most circuitous and worst located road might need to make a good profit. As in most problems of rate-making the result must be some compromise. This was pointed out by the Interstate Commerce Commission in one of its investigations, the Commission saying:

"It might be manifestly unfair to select a single advantageous line and make that the standard. We have seen that grain can be transported under actual conditions by the Lake Shore and the New York Central railroads from Chicago to New York at a cost less than that by most other routes. It would be hardly just to these other routes to compel the putting in of a rate upon that line which was reasonable with respect to it alone and which had no reference to its competitors. Upon the other hand, it would be equally unfair to the public if the most expensive line were made the standard. The Southern railway carries grain to some extent to Norfolk, Virginia. The distance is fully as great; and the rate less than to New York. Its operation is expensive; its tonnage comparatively light; its net earnings per mile only about \$1,700. A rate to the seaboard which upon any fair basis of compensation to investment would be reasonable for that company would be extravagantly high for the trunk lines. To permit such a rate would be to impose upon the general public the payment of an exorbitant charge'. Re Proposed Advances in Freight Rates, 9 I. C. C. 382, 425.'"

Beale and Wyman on Railroad Rate Regulation, pp 516, 517.

We do not think that the Independent company's line can be likened to the most circuitous, worst located, and most expensive rail line in the example cited. From a physical standpoint it is a line of greater capacity than that operated by the Elk Basin, its equipment and auxiliary facilities are as good, if not better than those of its competitor, and it appears to be as well constructed. It enjoys practically the same advantages of distance and routing

as the Elk Basin line. It is called an "imprudent utility" because, at the present moment most of the oil tonage is offered to its competitor, but there is no certainty that this condition will continue, under a single standard transportation rate, as the Elk Basin's contracts expire from time to time. And it must be remembered that the so-called independent production destined for transportation via the Independent line has been held in leash, pending marketing arrangements, to a much greater extent even than Elk Basin production. And some materially increased production from independent acreage is not beyond reasonable expectation. Energetic business competitors in their struggle for success always look beyond the present and are justified in keeping themselves fortified against each other's activities, even before the situation becomes serious. And in that "striving for something which another is actively seeking and wishing to gain" (being the Supreme Court's definition of competition in **United States v. Union Pacific R. R. Co.**, 226 U. S. 61, 87) the Independent line is justified in seeking a living rate and asking its prescription from the beginning in order to insure it an equal opportunity to reach the trade. With equal, living rates, the volume of business will depend on that line which renders the best service.

After as deliberate a review of the whole record as is compatible with the need for prompt decision which all parties voice, and bearing in mind our conception of the legislature's policy, we find no reason for disturbing the rate conclusions made effective by our order in June. With the exception of the figures for private operation for January, February, March and April, 1921, of the Elk Basin company, there is not now before us any new or additional evidence relating to rates proper, i. e. evidence "to serve as a fact base for a rate prophecy". The evidence of the four months' operations above does not carry us to the point of authorizing experimentation with the 15 cent rate, much less produce conviction as to its reasonable character for these reasons: The period is one of private operation only and contains no record of operating experience as a common carrier; the expense figures submitted fail to include taxes, a very heavy item; and, lastly, no satisfactory explanation is given for the great difference in operating experience for the 1920 period when the company gained \$34.20 while operating on the 15 cent rate, and the 1921 period when excessive earnings are claimed for the same rate. True, the line being new in 1920 and not "shaken down" may have been subject to unusual expense in that year, but it appears that at least 230,673 barrels of oil were put through in approximately 85 days, an average

of about 2700 barrels a day, while 352,015 barrels were put through in the 120 days of 1921, an average of about 2900 barrels a day. This would indicate, bearing in mind the increased production of 1921, that the line was about as efficient during the first period as the second, and that some other force, other than abnormal operating conditions must have acted to create the difference in result. As the record now stands it is impossible to reconcile the April view of the company's officers as to the inadequacy of the 15 cent rate, with the June notion of a different group of officers as to its generous character, and we are at a loss to select either period as indicative of the real force of the 15 cent rate.

The 32 1-2 cent charge is not blessed, from a pure rate standpoint, with antecedents of greater respectability than the 15 cent rate, but it has in its favor the fact that its authors have not taken contrary positions as to its validity, that it was built to apply to common carrier operations and not to the activities of a plant facility, and if the right of the Independent company to remain in the field is conceded, as we think it must be, the 32 1-2 cent rate, **on present production**, is not prima facie unreasonably high. It follows then, that the 32 1-2 cent rate is now entitled to a fair trial under actual operating conditions. This it has not enjoyed. The courts almost without exception require that a rate not prima facie unreasonable be subject to the ordeal of actual experience before they will condemn it as not "by any possibility" being fair. (Learned Hand, D. J., in Consolidated Gas v. Newton, P. U. R. 1920-F, 483, 537; and see the cases collected in the same opinion at page 490). Our order will provide that the 32 1-2 cent rate for both lines shall remain in effect until the further order of the Board, as it is impossible now to determine what length of time will be necessary for a fair test. It must be borne in mind, however, that the trial is not to last so long as utterly to prove or disprove the rosy hopes of those who professed a greatly augmented production for the Cat Creek field. The rate must prove its fitness under conditions of common carriage normally obtaining; it is not entitled to hang on a mere hope.

Pending the trial of the 32½ cent rate, we shall require each of the companies to furnish this Board a monthly statement showing in a detailed and complete manner pipe-line revenues and expenses, including monthly set-ups for depreciation, or amortization, and taxes. This information shall be in addition to the information required by the sixth paragraph of the order in Report and Order No. 318, June 4, 1921. An appropriate order will be entered.

ORDER.

At a session of the Board of Railroad Commissioners of the State of Montana held in its office in the Capitol, at Helena, Montana, August 6, 1921, commencing at 10:30 o'clock A. M., present Chairman Dennis and Commissioner Boyle, in the matter of the application of the Elk Basin Consolidated Petroleum Company for a rehearing in Docket No. 784, of the subject of pipe-line rates, and for a re-examination of the issues concluded in Report and Order No. 318, this matter being before the Board upon the application of the Elk Basin Consolidated Petroleum Company for said rehearing, and a full investigation of the matters and things involved having been had, including formal public rehearing at Lewistown, Montana, on June 30, 1921, and the Board having this day filed of record its report containing its findings and conclusions herein, which report is hereby approved, and by this reference made a part hereof, and now the Board being fully advised in the premises,

IT IS ORDERED That the prayer of the Elk Basin Consolidated Petroleum Company for the establishment of a 15 cent rate for pipe-line transportation of crude petroleum from the Cat Creek field to Winnett, Montana, be and the same is hereby denied, and Report and Order No. 318 of June 4, 1921, entitled "In Re Petroleum Tariffs," 14 M. U. R. be and the same is hereby approved and affirmed, until the further order of this Board.

IT IS FURTHER ORDERED That the lawful rate for gathering crude petroleum in the Cat Creek field, Montana, transporting it to Winnett, Montana, and loading it into facilities furnished by the shipper or consignee at Winnett, Montana, within five days after delivering same to the pipe-line companies for transportation, shall be and the same is hereby fixed for the Elk Basin Consolidated Petroleum Company and for the Independent Pipe Line Company at $32\frac{1}{2}$ cents per barrel of 42 United States gallons, and each company engaged as a common carrier in said field shall charge said rate and no other rate, in accord with Report and Order No. 318, and this affirmative action, until the further order of this Board.

IT IS FURTHER ORDERED That the Elk Basin Consolidated Petroleum Company shall, on or before the first day of September, 1921, file with this Board a supplement, to be known as Supplement No. 1 to Tariff No. 1, naming a rate of $32\frac{1}{2}$ cents per barrel of 42 United States gallons for gathering crude petroleum in the Cat Creek field, transporting the same to Winnett, Montana, and load-

ing at Winnett, Montana, within five days after receipt of crude petroleum for transportation, and said tariff shall be effective when filed, as aforesaid.

IT IS FURTHER ORDERED That in addition to the report required by Paragraph 6 of the order in Report and Order No. 318, June 4, 1921, and in addition to the information thereby required each carrier shall on or before the 15th day of each month, and as part of said required report, file with this Board a statement under oath showing for the preceding months the revenues and expenses of pipe-line operations for such preceding month, each and every item thereof being separately set out and explained, and proper monthly allowances being made for depreciation, amortization, and taxes, and the basis thereof explained.

IT IS FURTHER ORDERED That the secretary shall serve by mail a certified copy of this Report and Order upon each of the parties hereto, and that the same shall be in full force and effect forthwith.

(Commissioner Ross being absent did not sign the foregoing Report and Order.)

BOOK I PART II

PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION OF MONTANA

FORMAL ORDERS

November 30, 1920 to November 30, 1921

IN RE MISSOULA STREET RAILWAY COMPANY

(Docket No. 760. Report and Order No. 305.)

(Hearing September 21, 1920. Decided December 7, 1920.)

Rates—Record of Prior Proceedings—Introduction—Continuing Jurisdiction.

1. It is not necessary for either party to a rate inquiry to offer in evidence the records and transcripts of prior rate proceedings affecting the utility involved, for the Commission, being a legislative body, will always consider in a given rate case all relevant records of the utility's business since March 4, 1913. The Commission's jurisdiction is a continuing jurisdiction.

Fair Value—Investment—Tentative Valuation.

2. Where the Commission in the absence of a physical valuation, accepts tentatively a lump sum as representing the investment in public utility property, such sum is not to be confused with "the fair value of the property now used and useful in the public service."

Operating Expenses—Probable Allowances—Prophecy Price Decline.

3. It cannot be said in December, 1920, with the least basis of compusure, that 1919 or 1920 operating expenses of a street railway will be perpetuated through 1921, the downward sweep of the 1921 price decline still being in force. Actual expenses for 1919-1920 used to measure probable force of rate advance.

Rates—Fair Return—Waiver—Ten Cent Cash Fare—"Paper Rate."

4. Since there is in the instant proceedings no absolute insistence upon a fair return on the fair value of the property of the Missoula Street Railway Company, but simply a rate calculated to pay operating expenses, taxes, depreciation and fixed interest charges on bonds not commensurate with the value of the property, the Commission feels justified in rejecting a proposed ten cent cash fare, particularly since the company urges such fare merely as a single coin convenience and for the casual rider only, and designates same a "paper rate."

Application by Missoula Street Railway Company for increased rates and fares, on all lines of the said company in and around the City of Missoula, Montana, and for permission to file and publish the same. Certain increases granted in modified form.

Appearances: Murphy and Whitlock for the utility; John L. Campbell, City Attorney, for the City of Missoula, Montana; J. H. Bonner, Chief Engineer, and E. G. Toomey, Counsel, for the Public Service Commission of Montana. Before: Commissioner Dennis.

By the Commission: By application regularly made, the Missoula Street Railway Company, a Washington corporation, seeks authority to increase its rates and fares for street railway service in the City of Missoula, Montana, from the straight six cents cash fare in force by virtue of our Report and Order No. 251, December 4, 1918, 12 Mont. R. R. and P. S. C. Reports 83, to a cash fare of ten cents and a ticket fare of seven and one-half cents on city lines

with increases on interurban and other lines to conform to the city base. It is alleged in applicant's petition "that revenues derived from operation under the rates fixed and determined by Report and Order No. 251, and such modifications of such order as have been authorized and approved by the Railroad and Public Service Commission of the State of Montana are, have been, and will continue to be wholly inadequate and the rates fixed by said Order No. 251, and such modifications thereof as have been made are not now, nor have they been, nor will they be compensatory for the service rendered or furnish a reasonable return to your petitioner upon the property used by and useful to your petitioner in carrying on and conducting its street railway business". Whether or not these allegations accord with the facts is for us to determine in the light of the whole record now before us. And that record includes all the proceedings in Docket No. 682 from which issued Report and Order No. 251 as well as all reports and experience data since that time, July 1, 1918. We are specifically requested by petitioner to consider the proceedings in Docket No. 682, but without such request, the result would be the same, our jurisdiction over the company persisting as long as it continues its profession of public service and the state its present policy of regulation. Such jurisdiction is not dormant in the interims between appeals by the company or appeals by its patrons for some particular adjustment or relief. The state put us in motion and commanded that from March 4, 1913, we assume the daily administration of public utility supervision by the body politic. Obviously we can not ignore that which has transpired under our eyes since March 4, 1913, and in which we have had so active a hand; and it is immaterial whether we are invited to consider these things.

Rate Base.

The company has reported the following rate bases since 1914:

Year	Valuation
1914.....	\$652,626.76*
1915.....	660,352.56*
1916.....	666,990.52*
1917.....	696,507.70*
1918.....	703,824.07*
1918.....	706,486.58**
1919.....	704,748.80**

*For year ending June 30.

**For year ending December 31.

In Report and Order No. 257 we concluded, in the absence of a physical valuation, that the 1918 figure of \$703,824.07 was not subject to serious exception as a base for rate-making purposes, but the subject was not of such

vital consequence then because the company sought a rate to earn operating expenses at least, with the hope that there would be an amount over such expenses to apply against fixed interest charges of \$17,854.14 on \$360,000.00. With out in any wise committing the Commission to the figure in proceedings hereafter, we now accept the sum of \$704,000.00 as representing the investment in property now devoted to the service in question. This is not to be confounded with "the fair value of the property now used and useful in the public service", for petitioner asks simply "to make a fair return upon the **money invested**". Checks of the company's records from time to time indicate that \$704,000.00 were invested in the plant on December 31, 1919, and this amount not embracing certain intangibles that might properly have been capitalized as investment. Again, if the above figure accords with truth, it is certain that to apply the rule of present reproduction cost would result in a total figure greatly in excess of the book figure of \$704,000.00. On corresponding facts the United States District Court for the Southern District of New York recently held "that made a case proof against any theory of 'straight line' depreciation". **Consolidated Gas v. Newton**, PUR 1920-F, 483, 532. And it seems agreed here that no depreciation can be predicated on deficient service or loss of capacity; indeed the efficiency of the Missoula system is said to be worthy of emulation, and we have ourselves pointed to it as a satisfying example.

Of course, we do not say that present reproduction cost must govern, nor do we accept the book figures as in any sense final. They may be inflated, but as will presently appear, the establishment of a rate at once fair to the company and to the public, bearing in mind that the rate must induce to travel, is so far out of question here, even on a greatly decreased rate base, that we are not now required to prune and pare. For additional information concerning corporate organization and investment, see Report and Order No. 251.

Present Rate—Inadequacy.

Before noticing the attitude of the original capital-adventure here, W. A. Clark, and not the Missoula Street Railway Company (for the former owns all the bonds and all the stock save necessary qualifying shares) concerning his return on his capital outlay, it is best for clarity now to understand what the rates, past and present, have produced.

FIVE CENT FARE LEVEL

	Year Ended June 30, 1915	Year Ended June 30, 1916	Year Ended June 30, 1917	Year Ended June 30, 1913
Revenues	\$74,755.55	\$73,002.25	\$84,763.15	\$91,177.96
Expenses	71,111.71	74,177.56	77,216.95	86,849.00
Gross Revenues.....	\$ 3,643.84	\$ 1,175.31 def.	\$ 7,546.20	\$ 4,328.96
Bond Requirement being 5% on \$325,000	\$16,250.00	\$16,250.00	\$16,250.00	\$16,250.00
Interest on float- ing debt of \$35,000..		\$ 1,041.64	\$ 1,662.50	\$ 1,749.99
Deficit under Bond and Note Require- ments	\$12,606.16	\$16,116.33	\$10,336.30	\$13,671.03

These are the sums received and expended; we cannot say that more should have been received on the credit side or less expended on the debit side; the management of both sides has been equally efficient. And the figures speak for themselves showing that if the rate base was cut to \$360,000, admittedly far "in the red of confiscation," it would never have increased the efficacy of the five cent fare as a profit producer for W. A. Clark.

SIX CENT FARE LEVEL

	Year Ended December 31, 1919	Year Ended August 31, 1920
Revenues	\$100,755.48	\$111,648.44
Expenses	90,301.55	96,985.64
Gross Revenues.....	\$ 10,453.93	\$ 14,692.80
Bond Requirement being 5% on \$325,000....	\$ 16,250.00	\$ 16,250.00
Interest on Floating debt of \$35,000.....	\$ 1,500.00	\$ 1,500.00
Deficit under Bond and Note Requirements	\$ 7,296.07	\$ 3,057.20

"Expenses" in both tables include taxes and a modest depreciation allowance, the latter under the authority of our Uniform Classification of Accounts and Re Mission Range Power Co., 13 M. U. R.—, PUR 1920-C 56. 64. The six cent straight cash rate has been on probation since February, 1919, a period of nineteen months, quite sufficient under the facts to test its merit.

Minnesota Rate Cases, 230 U. S. 352, 469-472, 57 L. ed. 1511, 48 L. R. A. (U. S.) 1151, 33 Sup. Ct. Rep. 729;

Municipal Gas Co. v. Public Service Co., 225 N. Y. 89, 98, PUR 1919-C 364, 121 N. E. 772;

Darnell v. Edwards, 244 U. S. 564, PUR 1917-F 64, 61 L. ed. 1317, 37 Sup. Ct. Rep. 701;

Rowland v. Boyle, 244 U. S. 106, PUR 1917-E 685, 61 L. ed. 1022, 37 Sup. Ct. Rep. 577.

The twelve months ended August 31, 1920, do not correspond with any fixed accounting period, but they disclose operations for the twelve months previous to the September hearing and are of some value as indicating the latest forces in control, though cost variations in particular have been so transitory that any data developed since Feb-

ruary, 1919, are worth but little as a basis for prophecy. The chief value of this period lies in the fact that it is the most recent exhibition. The six cent straight cash fare has, according to the foregoing tables, widened the previous spread between revenues and expenses in favor of receipts and, in a measure, cut down the fixed interest charge deficit under the preceding five cent fare. To that extent it has justified the hopes held out for it. That it is not now, nor has it been compensatory, is true, proving the verity of the company's allegations in its petitions, and we so find. In May, June, and August, 1920, the present fare failed to earn operating expenses, due principally, it seems, to expenditures for maintenance and repairs prosecuted during those months.

The increased fares authorized by Report and Order No. 251 have not proved a deterrent to passengers. Under the five cent level these revenue-passengers were carried:

	Year Ended 6-30-1914	Year Ended 6-30-1915	Year Ended 6-30-1916	Year Ended 6-30-1917	Year Ended 6-30-1918
Revenue Passengers Carried	1,196,437	1,171,877	1,112,508	1,265,624	1,378,927

And under the six cent fare level these revenue-passengers were carried:

Year Ended 12-31-1918	Year Ended 8-31-1920
1,290,020.....	1,491,365

It would serve no useful purpose here to display the various factors causing the fluctuations in revenue-passengers carried over any given twelve-months period for the record shows that these fluctuations are in no sense attributable to a change of fare, and not all of the fluctuations are normally recurrent. Unquestionably a substantial portion of the increased revenues arose from an abnormal traffic increase in the fall and winter of 1919 when the weather was extremely cold. There has, however, ever been a steady increase in car riders, and the coming years should prove no exception. Indeed, there is reason to believe that the increased attendance at the University will prove of material consequence in the matter of revenue-passengers carried. On the experience to date, it is safe to assume that some fare increase between the present level and a ten cent level will not disturb the proved tendency.

To add to the unfavorable situation already presented and in itself sufficient to move us to some relief, petitioner exhibits certain increases in operating expenses over and above the expense levels of 1918 and our assumed expense levels for 1919. We then, December, 1918, took the year 1917 for an expense base, it being the first year of the in-

flated war period, and, on the evidence of 1918 increases actually realized by December, predicted operating expenses for 1919 at \$88,803.45. The operating expenses actually occurring in 1919 were \$90,301.55, a difference of \$1,498.10 for human error. The following tables illustrate the cost tendency in force since 1914 on the expense side. Exhibit 1, shows nineteen items and the relative expense for each during the year 1914, the year 1919, and for the nine months of the year 1920. If the 1920 total be extended to include twelve months, to conform to the preceding yearly totals it will equal \$65,500.00

EXHIBIT I

	1914	1919	9 Months of 1920
Maintenance Roadway and Track.....	\$ 594.85	\$ 3,705.78	\$ 5,093.03
Maintenance Paving .....	.....	27.20	744.79
Miscellaneous Track Expenses.....	33.87	59.33	198.74
Cleaning and Sanding Track.....	1,364.18	1,798.54	1,533.99
Maintenance Bridges .....	.....	.....	1,883.30
Maintenance Distribution System	541.88	991.66	667.17
Maintenance Car House and Shop.....	241.45	146.68	208.70
Maintenance Revenue-Cars	3,615.37	9,904.22	8,024.54
Maintenance Electric Equipment.....	932.90	998.59	1,553.37
Shop Expense	864.16	2,571.90	1,658.59
Wages Motormen	18,448.09	21,059.20	18,708.73
Wages Car Service Employees.....	127.78	218.15	489.19
Miscellaneous Car Service Expense.....	639.05	1,638.01	1,048.82
Wages, Car-House Employees.....	1,238.15	1,058.00	1,415.76
Rent	799.80	806.50	636.00
Office Supplies	246.30	282.84	250.15
Law Expense	480.00	962.50	720.00
Insurance	29.50	28.92	190.82
Taxes	3,392.17	5,491.72	4,095.00
Total	\$33,589.00	\$51,749.74	\$49,120.69

Exhibit II, is devoted to wages and Exhibit III, to the principal materials in current use. Per se, these exhibits dispense with the necessity for fortifying comment:

EXHIBIT II

	1914	1919	Per Cent Increase	1920	% Increase Over	
					1919	1914
Laborers	3.00	4.00	33	5.00	25	67
Foreman	3.20	4.50	40	5.60	24	75
Trackwalker	3.00	3.85	28	4.36	13	45
Linemen	4.375	5.75	31	6.75	17	54
Machinist	4.00	5.75	44	7.00	22	75
Inspector	4.00	4.50	12.5	5.00	11	20
Carhouse Foreman.....	5.00	6.00	20	7.33	22	47
Carhouse Men.....	3.00	3.75	25	4.40	17	47
Mortormen	.365	.49	34	.56	14	53

EXHIBIT III

	1914	1919	Per Cent Increase	1920	% Increase Over	
					1919	1914
Spikes	3.95	8.80	123	16.50	87.5	320
Sand	1.625	2.00	23	2.80	40	73
Curve Grease	.02	.045	125	.05	11	150
Gear Grease	.04	.0675	69	.0825	22	106
Brake Shoes, large..	.94	1.025	9	1.27	24	35
Brake Shoes, small	.555	.675	22	.71	5	28
Coal	4.10	7.80	90	10.60	26	158
Car Oil	.3825	.45	18	.60	33	57
Gasoline	.225	.27	20	.36	33	60
Coin Wrappers	.80	.80	....	1.15	44	44

At the close of our investigation in September it then seemed possible to compute, with relative safety, operating expenses for 1921, taking up the advances in 1919 and 1920 for which allowance had not been made in Report and Order No. 251 of December, 1918. It must be obvious, now, that any prediction would be the sheerest folly. The hit-and-miss price reduction which commenced in April of this year and at first seemed not to affect the general high level of necessary staples, became precipitate in October and extended to every essential commodity. Apparently the downward sweep is still in force—certainly the obtrusive facts of daily life show new low price levels following in rapid succession, until in some lines the long-looked-for pre-war cost level is no longer a fiction. It cannot be said now, with the least basis of composure, that 1919 or 1920 operating expenses of the Missoula Street Railway Company will be perpetuated through 1921, or any monthly fraction of the coming future. Nor, indeed, with any more assurance that a return to the 1917 level is imminent. The prescription of rates is ever a human forecast resting on certain presuppositions which in turn are anchored on experience. Now the only foundation we have to stand upon is the empirical knowledge since December, 1918, and even this may be of no value. Such as it is, however, convinces that, without taking into account aggravated costs of 1919 and 1920 whose continuance is illusory, the utility is entitled to some relief, and we so find.

Fair Return and Attitude of Capital Investor.

Before setting forth the quantum of relief determined upon, demands for the disposition of questions clustered about the vexed point of fair return must be met.

Since the commencement of our supervision of the Missoula Street Railway Company we have heard it suggested mostly by way of innuendo that "W. A. Clark never expected the street railway to pay him a profit", or that "W.

A. Clark gave the people of Missoula the street railway in return for extensions of the franchise for light and water to his other company, the Missoula Light and Water Company." We have never seen anything, palpable or tangible, even remotely suggesting that such was the fact. On the contrary, the conduct of the original capital adventurer before this Commission has always confirmed the opposite view, for his authorized agents have ever been zealous to gain, if possible, "a rate that would pay a fair return on the investment." And from the very start a charge calculated to meet operating expenses and contract fixed interest charges was exacted in contempt of any theory of gift, and this without profit from purported donees. The gratuity suggestion has no substance, and we would not temporize with it except for its recurrence and to express the hope that it will never show its face again. Certain it is that it will never gain admission. False notions of this kind seem to have gained general currency in Missoula through carriage by uninformed persons. What is needed most of all at this time is unstinted co-operation between the street railway and the Missoula public in line with the universal need. (Report, Federal Electric Railways Commission, p. 13). In Missoula as elsewhere, and with Mr. Clark, as with others, "the effort is to insure such a profit as would induce the venture originally and that the public will keep its faith so impliedly given." The Fourteenth Amendment, whereon hangs most, if not all, the law and all the prophets in the public utility field, guarantees Mr. Clark, if he insists upon it, a fair return on the fair value of the property he has devoted to the street railway service in Missoula. It is our function to try to do justice between the entrepreneur and the public, and not, simply because we have established a rate, to proceed like a court to see whether such a rate can "by any possibility still be a fair rate."

Heretofore petitioner has not insisted upon a fair return on its rate base. In July, 1918, on its first application, its counsel, speaking of operations from inception in 1910 to 1918 said:

"No dividends have been declared or earned or paid, and it is not thought possible that dividends of any amount might be earned under any rate of fare which the Commission would authorize, and we want to be set right upon that matter with the Commission. It is not the desire during the present times which are unusually stressful, to ask of the Commission what the law grants us, when it is possible to grant it, a fair return upon the investment. We believe that the conditions are such

that no fair return upon the money invested can be made. It is the desire of the company to find some point where the operating expenses may be at least covered, if possible, by the operating revenues of the company."

After reviewing the 1918 attitude, counsel at the September, 1920, hearing said:

"We all had an idea when war closed perhaps conditions would speedily return to normal. We are now practically two years beyond the signing of the armistice and we find that the conditions that we found very burdensome have been and are continuing. We believe that this utility is entitled to earn what all utilities are granted by law and by the commissioners; that is, a sufficient return to pay operating expenses, to set aside a proper fund for depreciation, to meet its tax bills, to take care of its fixed interest charges and to make a fair return upon the money invested. That is the position that we take before the Commission at this time."

Of course, counsel could not expect us to provide a rate to cover fixed interest charges plus a fair return upon the money invested, for money invested includes the capital burdened by contract (bonds, for example) with a fixed interest charge as well as the capital not so specifically burdened. The rate of return on all the money invested may be influenced by the fixed interest rate for the part of the investment saddled with bonds.

Notwithstanding the "position" now taken and passing the question of whether the "stress" assigned as a reason for the humble attitude of 1918 is not fully as operative now, the decisive fact is that in 1918 and 1920 the company submitted, as its conception of proper relief, tariffs providing for a cash fare of ten cents and a ticket fare of 7 1-2 cents. In other words, the identical rate structure seems to fit both the company's 1918 notion of a rate that "will at least pay operating expenses and a return on the bonded indebtedness" and the company's 1920 notion of a rate sufficient to earn "operating expenses, including depreciation and taxes and to make a fair return upon the money invested." It is true that in 1920 doubt is expressed whether any "rate can be fixed which will return a fair rate of interest upon the money invested," but it would seem that the company's proposed tariff would be consistent with its prayer for such a rate.

What ever may be the inference rightly to draw from this conduct, it is plain from petitioner's own case, accepting it without qualification, that if the 10 cent cash fare and 7 1-2 cent ticket fare level would pay only operating expenses and bond interest in 1918, it will not now in the face of the increased operating costs shown pay operating expenses and a **fair return on the investment**. This exhibits we think that petitioner really does not now insist on a rate which will earn its owner the minimum guaranteed by the Fourteenth Amendment, any more than it has ever so insisted. If anything is needed to prove this inference it is the simple fact shown by the record that if the fares were increased so as to bring in an average of ten cents (and the company's superintendent says this fare would approach the point of prohibition) per passenger for every revenue-passenger carried, the gross revenues on the basis of the September, 1919, to August, 1920, carriage would be \$149,136.50, and assuming expenses to be the same as those incurred in that period, \$96,985.64, the net revenue would be \$52,150.86, or a return of approximately 7.4 per cent on the \$704,000 base, possibly "fair" in a jurisdiction where the legal rate of interest, fixed in 1899, is 8 per cent (Sec. 5211, Revised Codes, 1907) and the going rate in alternative investments at least ten per cent. The example taken is the one which most favors the company, rendering unnecessary computations of what the proposed ten-cent cash fare and 7 1-2 cent ticket fare might earn under the company's conviction that not less than 85 per cent of its patrons would purchase tickets. Indeed, counsel and all the company's witnesses emphasize that the ten-cent cash fare is sought only for casual or transient traffic and for "operating convenience" and that the 7 1-2 cent ticket is for the regular patron.

Since the record demonstrates that there is in this proceeding no absolute and unqualified insistence upon a "fair return on the fair value of the property devoted to the public service," nor upon a fair return on the actual investment (and the company may waive the protection of the Fourteenth Amendment if it chooses, Cooley's Con'l. Limitations, 7th Ed., p. 250), but that what is really looked for is a rate to pay operating expenses, taxes, depreciation and fixed interest charges, "with something to apply on the stock" we feel justified in interposing objection to the establishment of a ten-cent cash fare which to quote petitioner's manager, on post-hearing reflection, "will become a paper rate only, except to the casual customer who uses the service on the basis of an immediately great convenience". If this statement is true, and we do not doubt its verity, a ten-cent "paper rate"

is inconsequential on the question of revenue. Its only consequence here arises from its reputed convenience as a "single coin fare" to motormen and to the public as against a "pennies fare." The fears of the Missoula street railway management in this regard are more imagined than real. The record does not reveal unfortunate experience in the collection of its six-cent fares now in force, and we know from observation and check of the service that eight-cent "pennies fares" in Butte and seven-cent "pennies fares" in Helena on one-man cars do not impede the proper handling of traffic. There is no longer in the West the popular aversion to pennies, a relic of the gold dust and silver dollar days; coppers are now cherished. Dismissing the convenience argument for the ten-cent fare, we have cast about for a cash and ticket fare to meet the company's present necessities as we find them, to induce additional travel if possible, and to insure justice to the patron. We have determined upon a cash fare of eight cents and a ticket fare of seven cents, with short trip rate on the Bonner, Cemetery and Fort Missoula lines to conform, and with freight and special car rates in line for uniformity.

On the basis of revenue-passengers carried, September 1, 1919, to August 31, 1920, revenues under the new schedule are predicted as follows:

Passengers Carried 9-1-1919 to 8-31-1920			Schedule of Rates and Estimated Revenues		
Tickets					
Bonner—Single Tickets.....	13,049			20 c	\$ 2,609.80
Bonner—Blocks of Ten.....	5,268			17½c	921.90
Missoula-Pine Grove, etc.	4,479			15 c	671.85
Milltown-Missoula	4,610			12½c	576.25
Marshall Grade-Missoula	13,508			7½c	1,013.10
City Lines	70,476			7 c*	4,933.32
	3,389			7 c*	237.23
School Tickets	42,734			4 c	1,709.36
Cash Fares					
Daly Add'n Line.....	359,839				
	7,000**	(Fair Grounds)		10 c	\$ 700.00
	352,839	75%	264,629**	7 c*	18,524.07
		25%	88,210**	8 c*	7,056.80
Residence Addition	328,587	75%	246,440**	7 c*	17,250.80
		25%	82,147**	8 c*	6,571.76
Cross Town	339,571				
	39,571**	(Deducted because loss of sugar factory)			
	300,000				
	2,000**	(Cemetery)		10 c*	200.00
		75%	222,600**	7 c*	15,582.00
		25%	75,400**	8 c*	6,032.00
Fort Missoula.....	94,411				
	5,500**	(To Fort)		10 c	\$ 550.00
		75%	66,683**	7 c*	4,667.81
		25%	22,228**	8 c*	1,778.24
Bonner	213,645		75,000**	20 c	15,000.00
			60,000**	15 c	9,000.00
			55,000**	10 c	5,500.00
			20,000**	7 c*	1,400.00
			3,645**	8 c*	291.60
					\$122,777.89

*Where rate is changed from existing fare.

**Estimated.

Against the actual expenses for the 1919-1920 period, *supra*, \$96,985.64, (we decline to forecast 1921 expenses at all), there would remain for the original capital adventurer \$26,219.59, being 3.72 per cent on the rate base of \$704,000,-00, or \$8,469.59 in excess of fixed interest charges on \$360,-000, the latter representing \$325,000 bond issue and \$35,000 floating debt. Time alone, and we think at least two years should be taken, will prove whether there is any merit to this disposition and, if not, any person interested may put another inquiry in motion. An appropriate order will be entered.

ORDER.

At a session of the Public Service Commission of Montana, held at its office in Helena, Montana, on the 7th day of December, 1920, in re petition of the Missoula Street Railway Company in the matter of increased street car fares in the City of Missoula and its environs, this matter being before the Public Service Commission upon application of said company and having been duly heard and submitted by all the parties interested therein, and a full investigation of the matters and things involved having been had and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions therein, which said report is hereby approved and made a part hereof,

IT IS THEREFORE ORDERED That the application of the Missoula Street Railway Company for an increase in its street car fares be, and the same is hereby, approved in a modified form.

IT IS FURTHER ORDERED That the Missoula Street Railway Company shall, not later than the twenty-sixth day of December, 1920, file an amended schedule providing for the following rates:

SCHEDULE "A"—City Lines.

8 Cents Cash Fare.

7 Cents Ticket Fare.

Free transfer privilege to any other city line within zone of 8 Cents Cash Fare.

Special students' fare of 4 cents on school days between the hours of 6:00 A. M., and 6:00 P. M. Tickets sold only in blocks of 25 or 40.

SCHEDULE "B"—Fort Missoula Line.

Within City Limits—8 Cents Cash Fare.

Within City Limits—7 Cents Ticket Fare.

Free transfer privilege to any other line within city limits.

From and to points between City Limits and the eastern boundary of Fort Missoula reservation to Daly Addition Line:

8 Cents Cash Fare.

7 Cents Ticket Fare.

10 Cents Cash with transfer privilege to any other line within the 8 Cent zone.

Between Fort Missoula and any point on the Daly Addition Line:
10 Cents Cash Fare.

A special rate of seven cents with transfer privilege to lines reaching any of the school buildings located in Missoula, for students boarding or leaving the car on the Fort Line at any point beyond the city limits, on school days only and between the hours of 6:00 A. M. and 6:00 P. M.

Fair Grounds Line.

The fare from and to the Fair Grounds will be ten cents without transfer privilege, except from and to points west of Northern Pacific Railway crossing on South Fifth Street, where the regular city fare of eight cents cash or a seven-cent ticket will be collected.

West Side Line.

When West Side car is operated to the Cemetery ten cents cash without transfer privilege.

SCHEDULE "C"—Missoula-Bonner Line.

Missoula to East Missoula and Marshall Grade, 10c.

Missoula to Pine Grove, Riverside Park, West Riverside and Milltown, 15c.

East Missoula or Marshall Grade to Bonner, 10c.

Missoula to Bonner, 20c.

East Missoula to Riverside Park, West Riverside and Milltown 10c.

East Missoula to Marshall Grade or Pine Grove, 8c cash or 7c ticket

Marshall Grade to Pine Grove, Riverside Park, West Riverside and Milltown, 8c cash or 7c ticket.

Pine Grove to Riverside Park, West Riverside, Milltown and Bonner, 8c cash or 7c ticket.

Riverside Park to West Riverside, Milltown and Bonner, 8c cash or 7c ticket.

West Riverside to Milltown and Bonner, 8c cash or 7c ticket.

Milltown to Bonner, 8c cash or 7c ticket.

A transfer is not given nor accepted on this line unless the passenger boards and leaves the car within the city limits of Missoula, except to students leaving Bonner, Milltown, or other points east of Missoula, at 8:25 A. M. on school days.

The following special rates to students, provided twenty or more tickets are purchased at one time:

Bonner to Missoula and return.....35c

Milltown to Missoula and return.....25c

Marshall Grade, or East Missoula to Missoula and return.....15c

Transfer privilege to the High School and State University on the 8:25 A. M. car on school days.

SCHEDULE "D".

Special Cars to Bonner, Milltown or Riverside Park.

Closed car one way not exceeding 75 passengers..... \$10.00

Open car one way not exceeding 120 passengers..... 16.00

Closed car one round trip not exceeding 75 passengers..... 16.00

Open car round trip not exceeding 120 passengers..... 22.00

Funeral car closed, limit 75 passengers, round trip..... 25.00

Funeral car open, limit 120 passengers, round trip..... 30.00

Chartered Cars Over City Lines.

Closed car not exceeding 50 passengers per hour..... \$ 7.50

Open car not exceeding 100 passengers per hour..... 10.00

Charge to be made from the time car reports until released

Regular cars will make extra trips on the following guarantees:

Extra round trip to Bonner \$7.50 less fares collected.

Extra round trip to Ft. Missoula \$6.00 less fares collected.

Extra trip to West Side \$3.00 less fares collected.

Extra trip to Daly Addition \$3.00 less fares collected.

Extra trip to Residence Addition \$3.00 less fares collected.

Extra trip to East Side \$3.00 less fares collected.

Extra trip to University \$3.00 less fares collected.

Extra trip to Ft. Missoula from Car Barn at midnight \$1.00 plus fares collected.

Closed funeral car from center of town to cemetery, limit 50 passengers, \$7.50.

Open funeral car from center of town to cemetery, limit 75 passengers, \$12.00.

Cars held after regular schedule time on the following guarantee:

Holding last inbound University car until 12:30 A. M., \$2.50 less fares collected.

Holding last inbound University car until 1:00 A. M., \$5.00 less fares collected.

Holding last Bonner car outbound from Missoula or inbound from Bonner or Milltown one-half hour, \$3.00, plus fares; one hour, \$5.00 plus fares collected.

Extra trip of Fort car from car barn to city, \$3.00, plus fares collected.

SCHEDULE "E"—Freight and Express Charges, When Carried on Regular passenger Car:

Between Missoula and Riverside Park, Milltown or Bonner.

Packages weighing from 1 to 10 lbs.	\$.10
Packages weighing from 11 to 20 lbs.	15
Packages weighing from 21 to 30 lbs.	20
Packages weighing from 31 to 40 lbs.	25
Packages weighing from 41 to 60 lbs.	30
Packages weighing from 61 to 80 lbs.	35
Packages weighing from 81 to 100 lbs.	40
Packages weighing from 101 to 150 lbs.	55
Packages weighing from 151 to 200 lbs.	75
Packages weighing from 201 to 250 lbs.	90
Packages weighing from 251 to 300 lbs.	 1.05
Packages weighing from 301 to 350 lbs.	 1.15
Packages weighing from 351 to 400 lbs.	 1.30
Packages weighing from 401 to 450 lbs.	 1.40
Packages weighing from 451 to 500 lbs.	 1.50
Each additional 100 lbs. at the rate of 20c per 100 lbs.	
Minimum charge 10c.	

Milk, Cream, Ice Cream, Bread and Laundry between Bonner or Milltown and Missoula:

Milk 1 gal. 15c. No charge for return of empty.	
Milk 2 gal. 20c. No charge for return of empty.	
Milk 3 gal. 25c. No charge for return of empty.	
Milk 5 gal. 35c. No charge for return of empty.	
Bread—large size crate—35c. Includes return of empty.	
Bread—small size crate—30c. Includes return of empty.	
Ice Cream 3 gal. freezer 35c. Includes return of empty.	
Ice Cream 5 gal. freezer 50c. Includes return of empty.	
Ice Cream 10 gal. freezer 75c. Includes return of empty.	
Laundry Basket—50c for round trip.	

Between Bonner or Milltown and East Missoula, or between Marshall Grade or East Missoula and Missoula, two-thirds of the foregoing rates.

Bulky packages or articles, such as stoves, mattresses, trunks, etc., two cents per cubic foot. Freight or express between Missoula and East Missoula or Marshall Grade and between East Missoula, Marshall Grade and Milltown or Bonner is two-thirds the rates charged between Missoula and Bonner.

Ice, Milltown or Bonner to Missoula, 50 cents per ton; cord wood, \$1.00 per cord. Minimum charge per special trip \$10.00. Lumber from Milltown to Missoula:

First 3,000 ft. \$1.60 per 1,000 feet.
 Next 4,000 ft. \$1.00 per 1,000 feet.
 Next 5,000 ft. \$.75 per 1,000 feet.

Balance to make up carload 70c per 1,000 feet. Minimum car \$10.00. Switching standard railway equipment on the Bonner Line, \$4.00 per hour from the time train leaves the car barns until its return to the car barns. Switching standard box car from Bonner or Milltown to East Missoula and return after having been loaded is \$10.00. Two or more cars moved at the same time, \$8.00 per car. Switching standard equipment from the car barns to the County Fair Grounds, \$6.00 per car for the round trip.

Work train service on City, Fort Missoula, Sugar Factory and Fair Grounds lines, \$6.00 per hour.

Express charges on City, Sugar Factory and Fair Grounds and Fort Missoula Lines are as follows:

Packages weighing from	1	to	40	lbs.	.....	\$ .05
Packages weighing from	41	to	75	lbs.	.....	.10
Packages weighing from	76	to	100	lbs.	.....	.15
Packages weighing from	101	to	200	lbs.	.....	.20
Packages weighing from	201	to	400	lbs.	.....	.25

Bulky packages, trunks, boxes, stoves, etc., one cent per cubic foot. All charges in excess of five cents must be paid at the company's office. All shipments must be delivered to the company securely wrapped and in first-class condition.

Present rules and regulations not specifically set forth in the foregoing schedule to remain in full force and effect as heretofore.

IT IS FURTHER ORDERED That this order shall be in full force and effect on and after January 1st, 1921.

IT IS FURTHER ORDERED That the Secretary of the Public Service Commission shall serve, by mail, a true copy of this Report and Order upon each of the parties hereto.

IN RE WIBAUX ELECTRIC RATES.

(Docket No. 772. Report and Order No. 308.)
(Hearing, November 9, 1920. Decided, Dec. 27, 1920.)

(P. U. R. 1921-B, 568.)

Rates—Increases—Municipal Consumer—Threats.

1. Threats of a municipal corporation, made during the pendency of a rate inquiry, to discontinue using electric energy for street lighting and municipal pumping if rates were increased, ignored, and case determined without reference to such improper actions.

Daylight Service—24 Hour Service—Rates.

2. Where existing 24 hour service of an electric utility means a direct loss of \$2,000.00 per year which would be increased to approximately \$4,000.00 on account of increased operating expenses and a fair return, thereby demanding greatly increased rates for its continuance, patrons were extended opportunity to choose between (a) 24 hour service at high rates or (b) dusk to dawn service at very moderately increased rates.

Public Utility—Patrons—Co-operation.

3. It ought not to be necessary at this day to emphasize the necessity for co-operation between a public utility and its patrons. Unless all concerned concede the existence of prevailing facts and work in concert for social welfare, community distress must result.

Application by the Eastern Montana Light and Power Company for an increase in its rates charged for electric light and power at Wibaux, Montana; application denied.

Appearances: E. J. Condon, Chicago, for the applicant; J. H. Bonner, Chief Engineer, and E. G. Toomey, Counsel, (in chambers) for the Commission. Before Commissioner Boyle, Chairman.

By the Commission: On September 15, 1920, the Eastern Montana Light and Power Company filed its application for a modification of its rates for electric service furnished at Wibaux, Montana; no specific increase was requested, the matter of adjustment being left to the discretion of the Commission after an investigation of operating conditions.

The company alleges that because of the increased cost of operation it is no longer possible to operate at a profit, and to substantiate its allegation, submitted a statement showing the result of operations for a period of three months, April, May and June, 1920, as follows:

Operating Expenses, including depreciation.....		\$3,122.69
Earnings, Light and Power	\$2,475.94	
Non-Operating Revenues	104.47	2,580.41
Deficit 3 months operation.....		\$ 542.28

As the three months selected would not afford a fair test upon which to base a rate adjustment we decided to make a complete inquiry into all conditions developing since our former investigation in January, 1919, and October 1919. 12 Mont. R. R. & P. S. C. Reports 126, 181, and with that end in view a formal hearing was held at Wibaux and sub-

sequently thereto our auditor made a complete check of the utility's books and records for the period in question. Because of past and present investigations, we are as well, if not better, acquainted with the affairs of the Wibaux Electric utility as with the affairs of any utility in the State.

In November, 1919, the Commission, after a searching examination which included an appraisal of the property and a thorough examination of the book accounts issued its Report and Order No. 275, providing for the following schedule of rates:

First	25	KWH	@	21c	per	KWH.
Next	25	KWH	@	19c	per	KWH.
Next	50	KWH	@	17c	per	KWH.
Next	100	KWH	@	15c	per	KWH.
Next	300	KWH	@	13c	per	KWH.
Additional		KWH	@	10c	per	KWH.
Discount 5%				Minimum monthly charge \$1.50.		

Heating and Cooking:

6 c per KWH

Municipal—Lighting:

Flat Rate of \$175.00 per month

Power Rates:

Motors \$1.00 per month per HP connected plus
the following scale of rates:

First	300	KWH	@	10c	per	KWH.
Next	300	KWH	@	9c	per	KWH.
Next	400	KWH	@	7c	per	KWH.
Additional		KWH	@	6c	per	KWH.

Certain hostile actions of the municipal corporation of Wibaux, following the conclusion of the 1919 proceeding, have had a marked effect on the utility's welfare in a community where co-operation should be the prime consideration. The city authorities vigorously protested the new rates charged for pumping and street lighting service, and on December 1st, the effective date of the new schedule of rates, curtailed the municipality's pumping service which resulted in the pumps consuming during November and December, 1919, and January, 1920, a total of 569 K. W. H. In January the city used no power at all but paid the connected load charge of \$15.00. On February 1st, the existing power pumping contract was cancelled and no power was purchased of the utility during February and March, 1920. In addition, and on February 1, 1920, the city reduced the street lighting service and this had the effect of decreasing the monthly revenues from such source from \$175.00 to \$125.00. On April 1st, the city reconsidered its action and resumed the purchase of power for pumping service. During the next seven months, April to October, 1920, inclusive, the pumps consumed 4,259 K. W. H., a monthly average of 608 K. W. H. Revenues for this service amounted to \$381.07, or a monthly average of \$54.44.

Shortly after the hearing in the instant proceedings in November of this year, and while this case was pending, the

city served notice upon the utility to discontinue all services, including the city lighting, of which we were duly advised. However, a personal investigation at Wibaux by our field representative developed the fact that the city, notwithstanding its notice to the utility, was still accepting energy for pumping and lighting service and apparently intended so to do at least until the decision of this Commission was announced.

We have been told that if the pumping and street lighting rates are increased the city would discontinue both services. Needless to say neither the city's actions nor announcements, purposely designed to influence our determinations, have received any attention at our hands. This case is decided with reference only to the facts as we find them, collateral announcements and threats being excluded.

Rate Base.

In Report and Order No. 275, 12 Mont. R. R. & P. S. C. Reports 181, November 1919, the value of the electrical utility property of the Eastern Montana Light and Power Company was fixed, for rate making purposes, at \$25,000.00. During the past year an additional sum of \$313.62 has increased the value of the plant as follows:

Additions to Distribution System.....	\$147.65	\$	
New Meters	165.97		313.62
Former Rate Base.....			25,000.00
			\$25,313.62

The latter figure must now be taken as the rate base for computation of a reasonable return to the corporate adventurer, any depreciation in the meanwhile being disregarded in this proceeding because the figure taken is below reproduction cost new.

Operating Experience.

Inclusive of one month's operations under the 1918 tariff, and eleven months operations under the increased rates of 1919, operating results for the period of twelve months from November 1, 1919, through October 31, 1920, were as follows:

Operating Expenses:			
Operating Expenses including taxes.....	\$ 9,914.97		
Depreciation	1,670.00		
Total	\$11,584.97	\$11,584.97	
Operating Revenues:			
Commercial lighting metered.....	\$ 7,758.25		
Flat Rates including street lighting.....	1,820.65		
Electric Heat	328.79		
Power, including city pumping.....	1,232.85		
Total	\$11,140.54		
Non-Operating revenues	299.69		
Total Revenues	\$11,440.23	\$11,440.23	
Operating Def. with no allowance for return.....			
on the investment		\$	144.74

The facts indicate that the affairs of the utility are economically handled. The salaries of the manager and the general office force are prorated upon a 50 per cent basis between the electric and telephone utilities and this apportionment, resting as it does on the amount of time devoted to each utility by the managerial force cannot be subject to objection. The device makes it possible to operate the electric utility at lower operating cost than if it were handled as an independent plant.

Daylight Service.

At present, the utility is furnishing a twenty-four hour service, the daylight service being established several years ago for the express purpose of furnishing power for the city pumps, which have a connected load of 15 horse-power. In addition to this load, there are four small independent power consumers, each operating a two horse-power motor, making the total connected horse-power load of the entire plant 23 horse-power. During the past twelve months the total revenue for power furnished was \$1,232.85. Of this amount a small stock-feed mill paid the utility \$446.40 for 2630 kilowatt hours. At present this mill is not operating and it is said that it will not operate during the coming year. If this is true, it would have the effect of reducing the power revenues to approximately \$800.00 per year on the basis of the past twelve months' operations. If the city pumps continue their present normal operation, the total power revenues for 1921 might be increased to something over \$1,000.00. In November, 1919, the Commission's investigation disclosed the fact that the operation of the plant during the daylight hours cost, for labor and fuel alone, with no allowance for fixed charges and depreciation, approximately \$2,500.00. Under existing conditions the cost of the daylight service is at least \$3,000.00 per year. It follows that under the most favorable operating conditions which we are permitted to conjecture now the day load means a direct loss to the company of \$2,000.00 per year.

To show what a continuance of the present twenty-four hour service schedule means, we have projected an estimate of operating expenses and revenues for the year 1921. Expenses must absorb certain increases in salaries and fuel oil costs, the necessity for which is put beyond doubt. The estimates follow:

Estimated Operating Expenses for Year 1921:

Operating Expenses, Nov. 1, 1919, to October 31, 1920, inclusive	\$11,584.97	
Increase, salaries and wages over 1920	450.00	
Increase fuel oil, consumption 12 months ending October, 1920	884.70	
Increase Taxes (electric department)	61.49	
Increase Depreciation on new investment	15.00	
	\$12,996.16	\$12,996.16

Estimated Revenues for Year 1921:

Commercial Lighting metered	\$ 7,758.25	
Municipal lighting	1,500.00	
Flat rates	170.65	
Municipal power (monthly average \$60)	720.00	
Independent power consumers	335.45	
Heating	328.79	
	\$10,813.14	
Non-operating revenues	299.69	
Total Estimated revenues	\$11,112.83	\$11,112.83
Operating Deficit		\$ 1,883.33
8% return on base rate of \$25,313.62		2,025.09
Total Deficit		\$3,908.42

From a review of the foregoing estimates it is evident that a schedule of rates which would provide for additional revenues of \$3,908.42 would be prohibitive, bearing in mind the present high schedule. For our part we are satisfied that, at least until the present abnormal cost of operation is materially diminished, the volume of daylight business at Wibaux wholly fails to justify the present twenty-four hour service. To speculate on a rate schedule which might accommodate the twenty-four hour service is wholly idle, and an order requiring its observance would only serve to postpone the settlement of the hours of service question, and in the meantime aggravate the prevailing unfortunate situation. We wonder that the users of electric energy for residences and stores, where the consumption is chiefly from dusk to dawn have so long carried the burden of the daylight load manufactured chiefly for the benefit of a few. If regular dusk to dawn service was reestablished (including the morning hours of one day each week for the convenience of householders and the daylight hours of one afternoon each week for the operation of the printing press and other services) operating expenses at the power station alone would be reduced \$2,500.00 per year, with the possibility of further reduction through related economy in other departments. On the other hand if the patrons gen-

erally will not relinquish daylight service, they will be compelled to pay rates greatly in excess of those now prevailing. We have outlined the situation as plainly as we could. Wibaux patrons now have the choice of paying abnormally high rates for an unjustifiable twenty-four hour service or of paying rates somewhat in excess of those now prevailing by diminishing the period of service from dusk to dawn. Though possessed of the power to order the curtailment of twenty-four hour service to dusk and dawn service, we shall not enter a positive order at this time, preferring that the city authorities, the patrons and the utility confer within the next thirty days in an endeavor to arrive at an agreement as to the period of service, and report back to this Commission.

It ought not to be necessary at this day to emphasize the necessity for co-operation between a public utility and its patrons. It suffices, now, to observe that, unless all concerned at Wibaux recognize the full force of the facts there obtaining and, in concert, face those facts with a determination to cast out the obscurities that have arisen to destroy confidence in the willingness of each interested group to work for the solution of a problem on which the welfare of the community depends, continuance of proper public service by the electric utility is in great jeopardy. Nothing is to be gained by flat refusal to concede the existence of the facts surrounding present operation and the enjoyment of modern lighting facilities may be lost. At the last hearing in November, 1920, not a consumer appeared to represent the interests of his class or to learn the position of the company, but, on the contrary a number of them made written or verbal ex parte protests against any increase in the present rate schedule. This is but another exhibition of the indifferent by-play which makes it difficult for us to winnow the grain from the chaff in the settlement of this class of questions, and which breeds destructive distrust on all sides—a spectacle too often witnessed in public affairs.

We do not say that the reestablishment of dusk to dawn service can be accomplished without an increase in rates over the present schedule. Present facts show, as we have said, a cost of \$3,000 per year for the existing daylight service, an average daily expense of \$8.22 or \$427.44 for the fifty-two days of daylight service under the dusk to dawn arrangement we suggest. The difference, \$2,572.56, represents the approximate saving to be realized by a return to the dusk to dawn arrangement. Cutting away this sum from our estimated expenses for 1921, namely, \$12,996.16, leaves \$10,423.60, and to this must be added eight per cent

on the rate base for a return, \$2,025.29, making a total of \$12,448.89, which consumers must pay for the product and service. A rate schedule to meet this requirement would have to be constructed about as follows:

	Estimated Earnings
First 50 KWH @ 24c per KWH.....	
Additional KWH @ 22c per KWH.....	\$ 8,836.05
Monthly Minimum Charge \$2.00.....	
Flat Rates and Minimum Charges @ \$2.00.....	395.15
Municipal Street Lighting.....	1,800.00
Heating (1½ 1920 consumption) 2733 KWH @ 8c.....	218.64
Municipal Power 7296 KWH @ 8c.....	\$583.68
Connected Horsepower 15x12.....	180.00
	763.68
4 Independent Power Consumers (½ 1920 consumption)	
1267 KWH @ 12c per KWH.....	152.04
Connected horsepower 8x12.....	96.00
	248.04
Non-operating revenues, same as 1920.....	300.00
Total	\$12,561.56

With this indication, we shall leave the choice as to rate alternatives based on hours of service to the consumers for a period of thirty days, and if agreement is not reached we shall interpose our own requirement. An appropriate order will be entered.

ORDER.

At a session of the Public Service Commission of Montana, held at its office in Helena, Montana, on the 27th day of December, 1920, in re application of the Eastern Montana Light and Power Company for an increase in its rates for electric service in the City of Wibaux, Montana, this matter being before the Public Service Commission upon application of said company, and having been duly heard and submitted by all the parties interested therein, and a full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions therein which said report is hereby approved and made a part hereof.

IT IS THEREFORE ORDERED That the application of the Eastern Montana Light and Power Company, for an increase in its rates for electric service in Wibaux, Montana, be and the same is hereby denied, pending the definite settlement of the hours of service schedule at Wibaux, Montana.

IT IS FURTHER ORDERED That the representatives of said company, the duly authorized officers of the municipal corporation of Wibaux, and the consumers concerned shall, not later than February 10, 1921, report to this Commission whether an agreement has been reached by and be-

tween said persons, as to the hours during which said utility shall furnish electric service in Wibaux, Montana, whether for twenty-four hours, or from dusk to dawn with one day each week for daylight service and if an agreement has been reached, the nature of the service determined upon or if no agreement can be reached, said fact shall be reported by said persons.

JURISDICTION IS HEREBY EXPRESSLY RETAINED over this matter, and every incident thereof, for and until such time as said report is returned to this Commission as aforesaid, and for a period, thereafter, not exceeding thirty days within which to make any further order or orders by way of final determination herein.

IT IS FURTHER ORDERED That the Secretary of this Commission shall serve, by mail, a true copy of this order upon each party hereto, and that this order shall be in full force and effect upon said service.

IN RE GLENDIVE ELECTRIC AND HEATING RATES.

(Docket Nos. 771 and 773. Report and Order No. 309.)

(Hearing, November 8, 1920. Decided February 7, 1921.)

(P. U. R. 1921-C, 91.)

Rates—Application for Increase—Compliance With Orders.

1. The application of an electric utility for increases in rates charged for electric energy was denied, pending compliance by the utility with a prior order of the Commission directing clear segregation of operating revenues, costs and expenses of electric service from steam heat service rendered by the same utility. Applicants for rate increases must come before the Commission with clean hands.

Rates—Electric and Steam Heat Plants—Return as a Whole—Separation—Sec. 5, Ch. 52, Laws 1913.

2. Section 5, Ch. 52, Laws 1913, simply embodies the common law rule that the charge for each kind of service rendered must be reasonable and just. Thus an entrepreneur operating an electric service and steam heat service, may not charge unreasonable rates for electric energy because his steam heating service is not earning proper revenues. The test is whether the particular service sustains itself, not whether it can subsist by operating from some other service or the private purse of its owner. It matters not that many patrons are users of both electric energy and steam heat, for they are to be treated as if they purchased the two products from companies independently furnishing the same. Cases cited.

Rates—Cost of Coal—Computations—Estimates.

3. The Commission rejected coal cost estimates submitted by a utility figured on the difference between 1921 costs and 1919 estimate of cost by Commission, since the estimates ignored 1920 coal costs prevailing just before application for increase. The applicant is entitled to measure cost increases for the future against the prevailing cost level, and it is wrong to go back to earlier extinct cost levels.

Mechanical Changes—Automatic Stokers.

4. Commission recommended installation of automatic stokers for a steam plant, making possible use of slack coal at a saving of \$1.50 per ton at the mine and 38.63 cents per ton in freight rates.

Application by the Eastern Montana Light and Power Company for an increase in its rates charged for electric light and power at Glendive, Montana; application denied pro tempore.

Appearances: E. J. Condon, President, Chicago, and F. C. Lieper, Counsel, Glendive, for the Eastern, Montana Light and Power Co; J. J. Ermatinger, for the Glendive Chamber of Commerce; R. T. Hurtle, City Engineer, for the City of Glendive; J. H. Bonner, Chief Engineer, E. G. Toomey, Counsel, for the Public Service Commission of Montana. Before Commissioner Boyle.

By the Commission: The applicant, a Delaware corporation, operating two public services in the city of Glendive, Montana, namely, an electric light and power service and a steam heating service, comes here for a rate increase predicated on recent expansion in the costs of labor, freight, coal and oil. The formal application seeks authority to put into effect advanced rates for general lighting, electric cooking and heating, municipal lighting and power, without any reference whatever to steam heating rates. At the hearing the president of the company testified that in his opinion some increase "should be put on the heating as well as the electric" but he makes no specific suggestion for an apportionment of operating costs between the steam heating and the electric services, or for any segregation of the plant equipment involved in rendering both services, or in the matter of steamheating rates.

The present failure of the company to divide electric and steam heating services at Glendive is in line with its conduct heretofore exhibited in the matter before this Commission. There is not now, nor has there ever been a bona fide attempt to effect that segregation of services which alone can afford a basis for a proper rate schedule for Glendive consumers. Some attempt was made by this Commission early in 1918, when the matter of an increase in steam heating rates was first presented by the company, to allocate to the steam heating service its share of operating expenses and overhead costs on a basis of coal consumption for the electric and for the heating service. The attempt was but the merest approximation to truth. 11 *Mont. R. R. & P. S. C. Reports* 80. The subject was again touched upon in February, 1919, 12 *Mont. R. R. & P. S. C. Reports* 126, and in the rate inquiry in October and November, 1919, preceding the present investigation, conducted in October and November, 1919, we said:

"In Report and Order No. 260 the Commission ordered that the company should, not later than the first day of April, 1919, equip its plant with steam recording gauges and meters, and after a fair test segregate the production costs chargeable to the heating department from those chargeable to the electrical department. A flow meter has been added to the system, but the results obtained to date are valueless. The station log shows that the meter has been out of order almost continuously since its installation". 12 Mont. R. R. & P. S. C. Reports 204.

Notwithstanding the repeated reference to the necessity of separating the two services, the company has persisted in ignoring all suggestions made in the premises, and we are satisfied that its action in the instant case in applying for a specific increase on electric rates alone, leaving steam heating rates to be distributed in accordance with some general notion of the Commission, is but a further postponement of an adjustment which must be made sooner or later and which should be made at this time.

The company has been quick to apply for relief against the advancing wave of high costs which mounted higher and higher from 1917 and continued through the middle of 1920, and our reports will show a response in keeping with the necessities of the situation and with the policy constantly followed during the war period when emergency relief rates were authorized without regard to the solution of fundamental problems or without reference to contravening demands for improved service. Our policy was not unlike that pursued by other regulatory commissions throughout the country, and it has already justified itself by preserving intact for better times services which must have been exhausted had not proper rate measures restored their vigor in periods of financial distress.

There is a most definite turn in the tide of financial affairs today, however, a turn consequent on the general effort at reconstruction, and we should fail in our duty if we did not recognize it now. The solution of fundamental problems can no longer be deferred, nor the demands of patient, but weary consumers, further ignored. "Reconstruction" has as definite an application to public utility affairs as it has to any other incidents of commercial or industrial life. The precise application of these general observations here is this: That the Eastern Montana Light and Power Company, in the operation of its Glendive plant, must begin its period of reconstruction by a definite and

workable segregation of its electric service from its steam heating service to the end that each service shall stand on its own feet.

Section five of the Public Service Commission Act, Chapter 52 of the Laws 1913, provides:

"Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, power, water, telegraph or telephone service, produced, transmitted, delivered or furnished, or for any service to be rendered as, or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful."

This section simply embodies the common law rule that the charge for each kind of service must be reasonable and just. A, who operates an electric plant, must charge only what is reasonable and just, and we must fix that charge in accord with the letter of the law. B, who operates an electric plant, and a separate steam heating plant as well, or an electric service and a steam heating service through the medium of unified physical equipment, may not charge unreasonable rates for his electric energy because his steam heating service is deficient or failing, for if B did so he would violate the statute which commands a reasonable charge for each service separately enumerated and considered.

In this case the Eastern Montana Light and Power Company has devoted a certain group of property and a certain proportion of human intelligence and energy to the operation of an electric light and power service in the city of Glendive, likewise in part a different property group and in part the same property group, and a different quantum of the human element to the operation of a steam heating service. These separate professions of public service having been made, the law, regulating and protecting, saves the property interest in each from confiscation by the imposition of inadequate rates or arbitrary rules, and this requires that no public service be compelled at a loss, for such is the essence of confiscation. The entrepreneur does not have to continue its steam heating service because its electric service affords it sufficient remuneration for both. The corporation's minimum of right is that each distinct service it professes be self-sufficing, the accident of unification under identical corporate management or of joint physical user of equipment for both services being immaterial. The owner may demand that each distinct devotion of property and ef-

fort to a certain and distinct public service bear the cost of that service, for to the extent it fails so to do, to that extent confiscation operates to destroy the property dedicated to the public use. Confiscation is to be determined by the same rule whether an individual or a corporation professes one public service or six different public services. **The test is whether the particular service sustains itself; not whether it can subsist by operating from some other services or the private purse of its owner.** So much for the necessity for separating services as a practical matter from the standpoint of the corporation professing the service.

While rates may not be so low as to deprive an owner of a fair return on the fair value of his property devoted to the public service, it is a principle of equal dignity and importance, and constantly opposing, or tending to oppose, that rates may not be higher than the value of the service to the public. Here are two utilities operated by one corporation and doubtless there are consumers of light and power who do not use steam heat and vice versa. Of what value, then, is the steam heat service to the straight electric users? Obviously, of no direct value. **Would any one suggest that the consumers of steam heat only should help pay for the electric energy used by those who demand only the electric service?** And yet if it is shown that the steam heat service is not self-sustaining, but that it is in fact leaning on the electric utility which is paying a fair return on the combined investment for the two utilities, are not the electric consumers, despite the fact that they never use a pound of steam heat, helping to pay for the heat consumed by those who patronize the steam heating utility alone? What, then, becomes of the principle that consumers of a public service should not be required to pay more for such service than it is reasonably worth?

Of course, it will be urged here that many of the company's patrons are consumers of both electric energy and power and steam heat. This is undoubtedly true, but must any consumer for that reason pay higher rates than would result if the deficient service were discontinued? Consumers may not be made to pay more for any service because they demand or use several different services furnished by the same company. The equity of the matter is the same as if they were furnished each service by an independent company. Nor do we believe that one class of consumers should be required to pay excessive rates for their particular service on the supposition that the social welfare of the community demands the maintenance of all services, including the failing service. We doubt whether there is any element of social welfare involved in a service

unable to make itself worth, in patronage, at least its upkeep. True, we yielded this principle to some extent in the **Helena Light and Railway Company case**, 13 M. U. R. 191, P. U. R. 1920-D 668, but as there noted, our action was expressly limited to that particular proceeding and is not to be taken as formulating a general principle. We are content that the foregoing considerations will commend themselves as correct to the careful student of the problem. That our judgement accords with similar reason, leading to like decisions reached by courts and commissions generally, is an evidence at least of its soundness. From the Supreme Court of the United States:

"If we do not misapprehend counsel, their argument leads to the conclusion that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its interstate business enough to give it just compensation in respect of its entire line and all its business, interstate and domestic. We cannot concur in this view. In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a state for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the state has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business".

Smyth v. Ames, 169 U. S. 466, 540, et seq.

"By Chapter 51, of the laws of 1907, the legislature of North Dakota fixed maximum intrastate rates, graduated according to distance, for the transportation of coal in carload lots.

"We have, then, to apply these familiar principles to a case where the state has attempted to fix a rate for the transportation of a commodity under which, taking the results of the business to which the rate is applied, the carrier is compelled

to transport the commodity for less than cost or without substantial compensation in addition to cost. We say this for we entertain no doubt that, in determining the cost of the transportation of a particular commodity, all the outlays which pertain to it must be considered. We find no basis for distinguishing in this respect between so-called 'out-of-pocket costs,' or 'actual' expenses, and other outlays which are none the less actually made because they are applicable to all traffic, instead of being exclusively incurred in the traffic in question.

"The state cannot estimate the cost of carrying coal by throwing the expense incident to the maintenance of the roadbed, and the general expenses, upon the carriage of wheat; or the cost of carrying wheat by throwing the burden of the upkeep of the property upon coal and other commodities. This, of course, does not mean that all commodities are to be treated as carried at the same rate of expense. The outlays that exclusively pertain to a given class of traffic must be assigned to that class and the other expenses must be fairly apportioned. It may be difficult to make such an apportionment, but when conclusions are based on cost the entire cost must be taken into account. * * *; and where it is established that a commodity or a class of traffic, has been segregated and a rate imposed which would compel the carrier to transport it for less than the proper cost of transportation, or virtually at cost, and thus the carrier would be denied a reasonable reward for its service after taking into account the entire traffic to which the rate applies, it must be concluded that the state has exceeded its authority."

Nor. Pac. Ry. v. North Dakota, 236 U. S. 585.

"Plaintiff relies upon Northern Pacific Ry. Co. vs. North Dakota, 236 U. S. 585, 604, where this court held that a statute which segregated a single commodity and imposed upon it a rate that would compel the carrier to transport it for less than the proper cost of transportation, was in excess of the power of the state. In our opinion, that decision is inapplicable, the present case being controlled rather by St. Louis & S. F. Co. v. Gill, 156 U. S. 649, 665, where . . . this court held 'that the correct test was as to the effect of the act (establishing maximum rate of

three cents per mile for passenger traffic) on the defendant's entire line, and not upon that part which was formerly a part of one of the consolidating roads; that the company cannot claim the right to earn a net profit from every mile, section or other part into which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unremunerative.'"

Puget Sound Trac. Co. v. Reynolds, 244 U. S. 574.

That the court has never abandoned the principle enunciated in **Northern Pacific v. North Dakota** is clear from Mr. Justice Hughes' comment in that case on **St. Louis etc. Ry. Co. v. Gill**, held to control the **Puget Sound** case, where he said:

"In **St. Louis v. S. F. Ry. Co. v. Gill**, 156 U. S. 649, a statute fixing a maximum rate for passengers in the State of Arkansas was challenged, but the allegation and offer of proof that the rate would compel the carriage of passengers at a loss related only to a portion, or division, of the railroad and not to the result of all the traffic to which the rate in question applied. The holding that this was insufficient was in entire accord with the above stated principle—that the rate making power may be exercised in a practical way and that the legislature is not bound to assure a net profit from every mile, section, or other part into which the road might be divided."

And in a West Virginia case:

"In 1907, the legislature of West Virginia passed an act fixing the maximum fare for passengers on railroads, as described in the statute, at two cents a mile The fundamental question presented is whether the validity of the passenger rate can be determined by its effect upon the passenger business of the company, separately considered By combining the results of the selected periods, it was shown that in the intrastate passenger business, according to the classification and apportionment adopted, the operating expenses and taxes consumed 97.4203 per cent of the total income It is apparent, from every point of view that this record permits, that the statutory rate at most affords a very narrow margin over the cost of the traffic."

Nor. & West. Ry. vs. W. Va., 236 U. S. 605.

Thus the court answers, affirmatively, the question presented. Theoretically each rate *per se* has a cost of service and a revenue producing power, but only theoretically. Railway accounting has not progressed so far, but it has moved to the point where the courts measure the reasonableness of a rate against the result of all the traffic (and no more) to which the rate applies. *A fortiori*, the rates for street railway, gas, electric, water and steam heat service should be measured against the results of the total traffic or business of each service, separately considered, and no more. This is the rule, emphasized by courts and commissions generally:

“That a company which sells gas may sometimes sell electricity is one of the accidents of commerce. The fortuitous conjunction of two unrelated functions or activities does not change the rate of profit to be derived from the fulfilment or pursuit of either. The defendants would have us say that the plaintiff, if it makes enough from electricity, must supply its gas for nothing. The legislature had not the purpose, if we assume that it had the power, to bring that result to pass. But the conclusion becomes the surer when we recall that there is another statute limiting the charge for Electricity. The Plaintiff must make no charge for electricity that is not reasonable and just (Public Service Commission Law, Sec. 65), and if it violates the prohibition, the Public Service Commission will hold it to its duty (Sec. 72). But a reasonable price for electricity does not mean a price that will make amends for unprofitable sales of gas. The legislature did not intend that a burden should be lifted from consumers of one commodity in order that it might be cast upon consumers of the other. **Minnesota Rate Cases (Simpson v. Shepard)** 230 U. S. 352, 421, 435; 57 L. Ed. 1511, 1550, 1556; 48 L. R. A. (N. S.) 1151; 33 Sup. Ct. Rep. 729; Ann. Cas. 1916-A 18. In fixing the price of electricity, the plaintiff is not entitled to recoup its losses upon sales of gas. For the same reason, in fixing the price of gas, it is not required to make allowance for the just and reasonable profit which is the limit of permissible return upon its sales of electricity. The distinction is often a close one between separate lines of business which, though run by one person, must severally earn rewards. (**Minnesota Rate cases, supra; Northern P. R. R. Co. v. North Dakota**, 236 U. S.

585, 595; 59 L. Ed. 735, 741; L. R. A. 1917-F 1148; P. U. R. 1915-C 277; 35 Sup. Ct. Rep. 429; ,Ann. Cas. 1916-A 1; **Norfolk & W. R. Co. v. Conley**, 236 U. S. 605; 59 L. Ed. 745; P. U. R. 1915-C 293; 35 Sup. Ct. Rep. 437), and separate incidents or services of one composite business, which distributively may be unprofitable, if they are profitable collectively (**Pennsylvania R. Co. v. Towers**, 245 U. S. 6; 62 L. Ed. 117; L. R. A. 1918-C 475; 38 Supr. Ct. Rep. 2; **New York ex rel. New York & Q. Gas Co. v. McCall**, 245 U. S. 345, 350; 62 L. Ed. 337, 341; P. U. R. 1918-A 792; 38 Supra. Ct. Rep. 122; **Puget Sound Traction, Light & P. Co. v. Reynolds**, 244 U. S. 574, 580, 581; 61 L. Ed. 1325, 1330, 1331; P. U. R. 1917-F 57; 37 Supra. Ct. Rep. 705.) It is sometimes said that even then discrimination must not be arbitrary, but must have some basis in the social welfare (**Pennsylvania R. Co. v. Towers**, 245 U. S. 6; 62 L. Ed. 117; L. R. A. 1918-C 475; 38 Sup. Ct. Rep. 2; **Northern P. R. Co. v. North Dakota**, *supra*; **Interstate Consol. Street R. Co. v. Massachusetts**, 207 U. S. 79, 86, 87; 52 L. Ed. 111, 115, 116; 28 Sup. Ct. Rep. 26; 12 Ann. Cas. 555. We need not go into such refinements now. In this instance the legislature itself has drawn the distinction and fixed the unit to be regulated. It has regulated the gas business as something separate and apart. It might have established a relation between the sale of gas and electricity. It has not chosen to do so. Neither business is an incident of the other. Neither has any relation to the other. Each bears its own burdens and enjoys its own privileges”.

Municipal Gas Co. v. Public Service Commission, New York Court of Appeals, 225 N. Y. 89, 121 N. E. 772, P. U. R. 1919-C 364, 370, 371.

“Furthermore, the representatives of the complainants in Poughkeepsie desired that the investigation include the electrical operations of the company on the theory that the price of gas should not be increased even if the gas operations should be found unprofitable, provided the company as a whole was earning a fair return. The sitting commissioner declined to receive such evidence, on the ground that the two branches of the business must be considered separately, and that the electric consumers could not be required to make up a loss

on the gas business. Doubt was, however, felt upon this point, and a case was pending demanding its judicial determination. This case was decided in accordance with the theory expressed by the sitting commissioner January 17, 1919. **Municipal Gas Co. v. Public Service Commission**, 225 N. Y. 89, P. U. R. 1919-C 364; 121 N. E. 772".

**Consumers of Gas v. Central Hudson G.
& E. Co., New York Commission, 2d**

Dist., Case 6408, P. U. R. 1919-E 294, 295.

"It is claimed that the company has had excess earnings and that therefore either the fair value of the property of the railway should be cut down, or the company should be required to meet a great increase in operating expenses without any relief in the way of increased revenue.

"The city, however, in estimating any such excess revenues, has arrived at results by taking as a fair value of the property a figure very much below that which we now find to represent said fair value. Without deciding, however, upon the railway earnings for the years 1912 to 1913 we are clearly of the opinion that there are no excess railway earnings for the period from 1910 on. If any excessive earnings have been made by the company, as a whole, during the period since 1910, they have arisen through the other activities of the company, rather than from the railway department: and in this connection, it is well again to call attention to the fact that the consumers of electricity, or those served by the electric utility, are not required, and should not be required as a matter of law, to pay excessive rates in order to make up any lack of return. if any lack of return so exists, in the railway department. This question has been placed beyond dispute by the Supreme Court of the United States in **Smyth v. Ames**, 169 U. S. 466, 42 L. Ed. 819, 18 Sup. Ct. Rep. 418; **North-eastern P. R. Co. v. North Dakota**, 236 U. S. 585, 59 L. Ed. 735, 14 R. A. 1917-F 1148, P. U. R. 1915-C 277, 35 Sup. Ct. Rep. 429, Ann. Cas. 1916-A 1; **Norfolk & W. R. Co. v. Conlev**, 236 U. S. 605, 59 L. Ed. 745, P. U. R. 1915-C 293, 35 Sup. Ct. Rep. 437. In passing upon the Milwaukee fare case in

the circuit court of Dane County, the court said: "The city presented testimony to show that when plaintiff's earnings in the lighting and heating departments were combined with those of its street railway department, its income was such as to warrant the reduction of fares made by the order in the fare case; but counsel for plaintiff does not present this position in his brief. It does not appeal to the court that it can ask consumers of electric current to help pay the expenses of supplying service to those who ride upon plaintiff's street car".

Milwaukee Electric R. & L. Co., Wisconsin
Railroad Commission, P. U. R. 1918-E 1, 44, 45.

"The idea which appears to have been prevalent that, if the operations of a utility as a whole have been profitable, the fact that a particular branch of the service was unremunerative, or indeed was operated at a loss, was of no consequence, seems to have been dispelled by the Supreme Court of the United States in three cases decided March 8, 1915, viz., *Northern P. R. Co. v. North Dakota and Minneapolis, St. P. & S. Ste. M. R. Co. v. North Dakota*, 236 U. S. 585, 59 L. Ed. 735, L. R. A. 1917-F 1148, P. U. R. 1915-C 277, 35 Sup. Ct. Rep. 429, Ann. Cas. 1916-A 1; and *Norfolk & W. R. Co. v. Conley*, 236 U. S. 605, 59 L. Ed. 745, P. U. R. 1915-C 293, 35 Sup. Ct. Rep. 437.

"Applying the principles therein set forth to the case under discussion, the Commission apprehends any attempt to compel the unprofitable operation of the street railway system on the theory that the other departments of the utility are earning sufficient revenue to make the business as a whole profitable would, if resisted, fail. And we believe rightly so. We see no justice in compelling a light or power consumer to assume the burden which arises from the street car operations, and for which the car rider alone is responsible".

Re Portland R. Light & P. Co., Oregon commission, P. U. R. 1918-A 754, 755. "Because the electric company and street railway were owned by the same parties, it was contended at the hearing by those opposing the petition that the two properties should be treated as an entity, and that, if they paid as a whole, the owners should not be

allowed to separate the two and discard the one which did not pay.

"It was further stated that the town of Exeter had paid more to the electric company for street lighting than it would have had to pay the gas company at Exeter for the same service. The town did this because it was generally understood that the electric road was not prosperous and the owners needed all they could get from the electric company to make up for what they lost on the street railway. The president of the street railway, however, was not aware of this general understanding until the date of the hearing. If it were a fact that the patrons of the electric company were voluntarily paying rates high enough to give a fair return to the joint owners, not only on the electric property, but on the street railway property as well, then the owners should not be allowed to permanently discontinue the street railway service. We doubt very much our authority to order the patrons of the electric company to pay rates sufficiently high to make up losses sustained in operating the street railway; but if they paid such rates voluntarily we should, of course, not interfere. The general principle is, and justice requires that every utility should be supported by those receiving its service and not by those receiving service of some other kind".

Re Exeter, H. & A. St. R. Co., P. U. R.
1919-B 251, 256, 257.

"It will not be denied that those customers who are using only the electrical service of the company should not be called upon to pay anything in excess of fair rates in order that the losses resulting from the conduct of the water business may be made up. Water customers should pay for the service rendered a fair price, and in order for that service to be rendered the company must either receive that fair price from its water takers or else curtail service, face bankruptcy, or abandon service. No customers of a water company want any of these things to happen, and we believe that the patrons are willing and desire to treat the company fairly".

Lincoln Co. Power Co. v. Itself, Maine Pub. Utilities Commission, F. C. 199, P. U. R. 1919-C 862, 865, 866.

"Combined Property: In Count No. 3 the petitioner requests, in effect, that it be allowed to increase the rates and charges for electric energy so as to produce a net return in excess of the reasonable return on the investment used and useful in serving the public with electric energy, so as to offset the inevitable loss which the petitioner anticipates from the operation of the gas plant.

"If the gas and electric plants were owned by different parties, the public could not properly be assessed through excessive rates in one plant to balance a loss suffered in the other plant. To grant the request of the petitioner in this respect would be to penalize the public for allowing both plants to be owned and operated by the same party or corporation.

"The proposition is manifestly unfair and unjust to the consuming public. The fact that the greater part of the burden of the increase in rates and charges would be borne by customers who are users of both gas and electricity does not justify an excessive charge for electricity.

"The Commission will refuse to grant the request of the petitioner to consider the two properties as one, allowing excessive rates in one property to offset losses in the other property, but will grant only such rates for each property as may be justified by the investment and by the value of the plant used and useful in the public service in that particular property".

Re Jefferson City L. H. & P. Co., Missouri Public Service Com., P. U. R. 1919-A 710, 713, 714.

"The city bases its objection, however, on matters not only related to the cost of service, but on social considerations, arguing that the value of the service to the community should be the determining factor rather than the cost of service, and that the railway department should be considered a byproduct and its losses borne by the electric department. The value of service is almost entirely a relative matter, and if the service in this

case is not worth to the patrons enough to enable the company to meet its operating expenses and provide a very small return upon its investment, we do not believe that the value of the service is so high that any serious inconvenience to the public will result from the application of the fares asked for.

"As to the railway department being treated as a subsidiary of the electric department and the furnishing of railway service as a byproduct, we think the argument on behalf of the city is fallacious. If the company is to have the fair return to which it may be assumed that it may be entitled, that fair return must come primarily from its operating revenues, and if the railway department is carried as a byproduct, it means that the consumers of electric current are indirectly made to maintain a railway system whose service is not of sufficient value to the public to make it self-supporting".

Re Ashland Light, P. & St. Ry. Co., Wisconsin Railroad Commission, R-2390, P. U. R. 1919-A 666, 670.

We are aware of certain commission decisions denying rate increases in deficient departments of a company rendering two or more public services if the company's operations as a whole were remunerative, but our search establishes that the force of such decisions is expressly limited to a period of war emergency. We do not consider them applicable here where we are attempting a fundamental and composing solution of Eastern Montana Light and Power Company's case at Glendive. At the inception of the reconstruction period we propose to cut away the wreckage of past mistakes, painful though the process may be, and start each utility on its own feet under the guidance of approved principles.

Accounting Difficulties.

There is no doubt from the record that the operations of the Glendive plant for the year 1920 were satisfactorily remunerative to the stockholders who made the original capital investment. In December, 1919, we estimated revenues and expenses for the twelve months following. The history for November, 1919, to October, 1920, develops this variance:

	Estimated	Actual
Revenues ..	\$82,609.92	\$95,351.42
Expenses ..	71,477.43	79,027.37
Gross Income	\$11,132.49	\$16,324.05

The excess of gross income realized over the amount required for a fair return should, we feel now, have absorbed most of the increased costs developed and claimed for the future.

The application for an increase is predicated altogether on cost increases that are said to be unavoidable for the year 1921, and some evidence is submitted showing positive increases already accrued; particularly is this true for coal. Certain of the increases accrued during the latter half of the year 1920 and to that extent are already reflected in operating expenses. Their effect, then, is more easily measured than if we had to test them against a future rate scale constructed to absorb them. Again, increased costs accruing at different times from July, 1920, to the first of January, 1921, are not to be given the dominant force which the applicant claims for them, by adding them anew to the total of the 1920 operating expenses. To the extent of their inclusion in the past year's operations they are not entirely new charges for 1921.

Another error in the submission of evidence on the increased cost of coal for the year 1921 arises from the fact that the company reverts to the Commission's estimated cost per ton made in October, 1919, when a per ton coal cost of \$4.57 was prophesied. It is shown that the average price per ton for coal during nine months of 1920, and until the recent increase, was \$4.69, and it further seems established that the cost of coal for 1921 season is to be \$6.218 per ton. In all coal costs are included freight and war tax. On an average coal consumption of 8265 tons per year, resting on the coal consumption for the years 1918, 1919 and 1920, the company claims an increase in this item of coal alone for 1921 of \$13,620.72 over 1920. The applicant multiplies 8265 tons by \$1.648, the last figure being the difference between the 1921 coal cost and the 1919 estimate of the Commission, namely, \$4.57. This method of computing increased cost is wholly erroneous, for it ignores altogether the coal costs for the year 1920, which will decrease the spread by at least 12 cents; and notwithstanding the coal costs of 1920, the company earned a fair return. It would be just as fair to go back to 1900 and take the coal costs then prevailing, and subtract them from the coal costs now prevailing and on the basis of the number of tons of coal used, say that the increase was to be determined by multiplying the difference against the tons of coal consumed. The applicant is entitled to measure cost increases for the future against the cost level prevailing just prior to his application, and particularly is this true when the prior prevailing cost level did not impair a fair return. Careful audit of the coal stock record maintained

by the company develops a disparity between the statements made by the company at the hearing covering coal consumption per month and this record. The differences are shown in the following table:

Month	Company's Claim at Hearing	Company's Coal Stock Record
January	838.76 tons	658.0 tons
February	845.37 tons	826.5 tons
March	380.00 tons	445.0 tons
April	654.00 tons	772.6 tons
May	300.40 tons	279.1 tons
June	356.40 tons	528.2 tons
July	720.00 tons	644.9 tons
August	586,000 lbs.	586,000 lbs.
September	1,524,600 lbs.	1,593,200 lbs. *
October	1,025,400 lbs.	1,025,400 lbs.

*Corrected.

Further disparity is found, upon examination, to exist between the company's claim for increased wages for its manager at Glendive and the books of the company. The company claims that for 1921 it will pay its manager \$300 per month and that that particular increase commenced in the summer of 1920. The record shows that the company is now, 1921, paying its manager only \$200 per month and that it allows him to live in a house owned by the corporation for an agreed rental of \$100, but the monthly rental of \$100 is not charged to operating expenses and to that extent the company's claim fails of proof. These things are mentioned merely as a guide to the company in formulating its proof on further proceedings, after the correction of the present situation arising from a blending of the electric and steam heating operations. We do not suggest in advance of a proposal from the company just where the line of demarcation should be drawn between the electric operations and the steam heat operations. It may be that the heating department should carry the burden of 25 per cent of the boiler room labor, fuel and water expense, with correspondingly graded percentages for other costs involved. However, we prefer to hear from the company on this matter and a proper order will be entered, denying the application for the time being until the segregation and allocation aforesaid is made, without prejudice to a renewal of the petition when these things have been accomplished.

Mechanical Changes.

For a steam plant in a town the size of Glendive the cost of generating a kilowatt hour of electricity is extremely high. It is recognized, however, that this plant was purchased by its present owners from local residents as it now stands and that they are not responsible for either the design or the installation of large steam turbines suitable

for a town many times the size of Glendive. The Eastern Montana Light and Power Company has installed a smaller unit used for pulling the load during off-peak hours, which, combined with the bonus paid plant employes for efficient operation, has reduced the coal requirements about 500 tons per year. Our examination indicates that every employe is now doing his utmost to deliver the maximum service at the minimum expenditure of coal. which was not the case during our investigation in 1919.

It is unfortunate for both the company and the consumers that mechanical stokers were not included as a part of the original plant design. The installation at the present time would cost many thousands of dollars by reason of the increase in cost of the equipment, and the fact that it would be necessary to reconstruct the plant to accommodate them. Automatic stokers would make it possible to use slack coal at a saving of \$1.50 per ton at the mine and 38.63 cents in freight rate, this grade taking a cheaper rate than the nut coal now used. As the average annual consumption is 7500 tons, this equipment would decrease the annual operating expense \$14,147.25 besides the saving in both labor and maintenance at the power plant. It is recognized that the change cannot be made during the season of heaviest demand, but we feel that the question should be given earnest consideration during the spring months of 1921, when the market price of plant equipment will no doubt be lower than at present. The saving that would accrue through this improvement should pay for the installation in a few years, making possible more efficient service at lower rates than those in effect at present.

ORDER.

At a session of the Public Service Commission of Montana held in its office in the Capitol, Helena, Montana, on the 7th day of February, 1921, commencing at ten o'clock A. M., present, Chairman Dennis and Commissioners Boyle and Ross, in the matter of the application of Eastern Montana Light and Power Company for an increase in its rates for electric service at Glendive, Montana, Docket No. 771, and upon the initial motion of the Public Service Commission of Montana against Eastern Montana Light and Power Company, in the matter of an investigation into its electric and steam heating operations in the city of Glendive, Docket No. 773, these matters being before the Commission upon the application of the company and upon the initial motion of the Commission, as aforesaid, and a full investigation of the matters and things involved having been had, including a full public hearing in the City of Glendive and a thorough check by the auditor of the Commission of the

accounts and records of the company for the year 1920, now the Commission being fully advised in the premises,

IT IS THEREFORE ORDERED That the application of the Eastern Montana Light and Power Company for an increase in rates charged for electric service at Glendive, Montana, be and the same is hereby denied, for the time being, and until compliance with the direction contained in the second paragraph of this order, this denial being without prejudice to a renewal of the application upon compliance with said second paragraph.

IT IS FURTHER ORDERED That the Eastern Montana Light and Power Company shall, on or before the first day of April, 1921, submit to this Commission a proposal for a proper separation of its electric service and its steam heat service at Glendive, Montana, so as completely and clearly to segregate the operating revenues, costs and expenses of the electric service from the steam heat service hereafter, independent and without reference to the other, said proposal to be acted upon by this Commission within 15 days after its receipt, either by acceptance of the same or modification thereof, or substitution of a plan determined upon by the Commission, and in any event the segregation and allocation to become complete and effective on and after May 1, 1921.

IT IS FURTHER ORDERED That the Secretary of this Commission shall forthwith serve, by mail, a true copy of this Report and Order upon each of the parties hereto, and that the same shall be in full force and effect upon said service.

O. J. LIEN, et al., v. SUPERIOR ELECTRIC LIGHT
AND WATER WORKS.

(Docket No. 779. Report and Order No. 312.)

(Hearing, January 18, 1921. Decided, February 23, 1921)

Hearing—Notice—Evidence—Commission Practice.

1. It is a well established rule of the Public Service Commission to frame its notices of hearing sufficiently broad to admit of the widest latitude of investigation at hearings, consistent with liberal rules of relevance, but the rule may not be invoked as an excuse for determining the merits of an important matter mentioned in the notice of hearing, but never touched upon at any subsequent stage of the proceedings and not involved in the pleadings upon which hearing is had—in this instance water rates, where hearing covered electric rates only.

Accounting—Past Mistakes—Corrections—Uniform Classification.

2. The Commission is powerless to correct, substantially, past accounting mistakes, particularly those of seven years' operations occurring prior to state control, but from date of rate inquiry it may insist that Uniform Classification must be followed with fidelity.

Accounting—Items—Corrections.

3. Additions to plant equipment must not be charged to operating expenses; payments on plant and interest on deferred payments must come from gross income and not be charged to operating expenses. Water and electric service accounts must be clearly segregated.

Meters—Voltage Regulator—Master Meter.

4. Utility ordered to install separate meters for power and lighting and forbidden to sell energy to any consumer under any circumstances save through a meter. Utility required to install a mechanical voltage regulator and to keep master meter in repair.

Rates—Capacity—Persuading Capital Outlay—Extensions of Service.

5. In addition to inducing the venture originally, continuing a fair return on the capital outlay, and providing for the natural exhaustion and disintegration of machines and processes, rates must persuade improvement and extension of the service whenever there is justifiable demand therefor.

Rates—Tentative Scale—Trial—Meters.

6. In absence of reliable data for rate prophecy, trial of tentative scale ordered, for a period of from 9 to 12 months, to begin after all services have been metered.

Complaint by O. J. Lien and ten others against the Superior Electric Light and Water Works on the ground of deficient light and power service. Application by utility for increased rates. Service deficiencies ordered corrected and tentative rate schedule prescribed.

Appearances: Geo. S. Childers, W. L. Hyde, for Complainants; B. F. Berry, for the Defendant; E. G. Toomey, Counsel, J. H. Bonner, Engineer, for the Commission. Before Commissioner Ross.

By the Commission: On December 13, 1920, O J. Lien, Chairman of the Board of County Commissioners of Mineral County, Montana, and ten others, filed a complaint against the Superior Light and Water Works alleging that the electric service of the utility at Superior, Montana, was notoriously deficient, specifying, in particular, sub-standard voltage, intermittent current for lighting and unreliable power service. By telegram of December 31, 1920, eight power consumers represented that their service had been discontinued, power having been diverted to the operation of a sawmill controlled by the owner of the electric utility. By answer filed on January 10, 1921, the utility made denial of certain allegations in the complaint, denials pregnant with the admission, however, that, **some times** the voltage was below standard and the current for power deficient. The answer alleged by way of further defense to the charge that lighting service at the county court house is so poor that county officers are required to close their offices before the dusk hour. that the contractors in wiring the building in 1920, installed a three wire system not suitable as a means of service for defendant's plant. The answer

concluded with the allegation that the system of the defendant is not now so equipped that standard lighting can be furnished without additional expense, and it is asserted that needed funds cannot be obtained without injury to the credit of the plant owner. After the hearing the defendant petitioned for an increase in rates for electric service and for an increase in rates for water service.

We may put aside at once, in this proceeding, the application for an increase in water rates. While the notice of hearing herein was sufficiently broad, in terms, to allow inquiry into any of the public services undertaken by the defendant, the issues made by the complaint and answer related solely to the electric service, and the testimony at the hearing was confined to that service alone. No one interested conceived the notion of an investigation into the water service until after the hearing on the electric service and manifestly any action by the Commission, at this time, as to water rates would constitute a distinct surprise to water users. Fair dealing requires their participation in any consideration of the water service as a distinct service rendered by the defendant. It is a well established rule of this body to frame its notices of hearings sufficiently broad so as to admit of the widest latitude of investigation possible at the hearings, consistent, of course, with liberal rules of relevance, and so as to preclude any person from making claim of injury or denial of due process on the ground that the order resulting from any proceeding exceeds the terms of the notice. This rule is plainly meant to promote full consideration of the merits of any matter involved, whether the principal matter or an incidental subject. We should defeat the whole purpose of the rule if we proceeded to determine on its merits an important matter mentioned in the notice of hearing but never touched upon at any subsequent stage of the proceedings. The question of water rate must await an independent proceeding.

The Superior Electric Light and Water Works is the name given an individually owned plant located near the town of Superior, the county seat of Mineral County, Montana, devoted to furnishing electric service to the towns of Superior and Iron Mountain, Montana, towns forming one community lying east and west of the Clark's Fork of the Columbia River on the lines of the Milwaukee and Northern Pacific railways, respectively. Electric energy is generated by hydro-electric equipment. Sale of electric energy was commenced in 1906 and our jurisdiction over the service was, by operation of law, incepted on March 4, 1913. A resume of the annual reports from 1915 to 1919, inclusive, shows the following history and exhibits the owner's conception of the plant's operations.

Year Ending	Investment	Total Earnings	Tot. Exp. Inc. Depr. & Taxes	Increase or Deficit	Population Served	No. Consumers	
						Light	Power
June 30, 1915....	\$4,750.00	\$1,650.00	\$1,135.00	\$ 515.00	200	50	3
June 30, 1916....	6,727.30	2,222.18	2,316.73	94.55D	400	67	
June 30, 1917....	7,621.00	2,711.58	4,147.79	1,436.21D	400	74	2
June 30, 1918....	7,700.00	2,877.35	3,762.04	884.69D	350	81	2
Dec. 31, 1918*	7,700.00	1,355.79	2,053.24	697.45D	350	76	1
Dec. 31, 1919*	6,300.00	1,126.56	1,411.80	285.24D	300	73	1
Dec. 31, 1920....		2,571.06	4,354.75	1,783.69D		73	5

*Six months. D deficit.

It is evident from an inspection of the records of the utility that operating revenues have been burdened with costs which are properly items of capital investment, and it is plain that no serious effort has been made to keep and render accounts in the manner and form prescribed by this Commission in its Uniform Classification, effective July 1, 1913. This criticism is applicable to all who have conducted the plant since 1906. While we are powerless to correct, substantially, past mistakes, particularly those of the seven years' operations occurring prior to state control of the utility, from this time forward the Uniform Classification must be followed with fidelity in the matter of accounts and plant records. Additions to plant equipment must no longer be charged to operating expenses; payments on the plant, and interest on deferred payments must come from gross income, and not from operating expenses. The owner cannot expect the consumers to pay for his plant and at the same time exact a return on capital contributions made by them. Confusion now obtains from the practice of blending the accounts of the water utility with the accounts of the electric utility. There is no reason whatever for treating these utilities as one. From a physical standpoint they are as independent of each as if separately owned, and they must be so conducted. A definite and uniform segregation of office overhead and superintendence can be effected without difficulty.

The record contains abundant proof of the service deficiencies alleged in the complaint herein. Patrons of the electric service have been furnished light far below the standard voltage, intermittent current has produced annoying flickering in the lamps, and power users have never been assured of a continuous and sufficient supply. The evidence is not of a few isolated instances of failure, but of more or less constant breaches of duty. A number of factors contribute to this inadequacy, the most potent of which in our view is the lack of metered services, espec-

ially in view of the limited supply of electricity developed for lighting and power. The water supply for the electric plant is limited to the flow of a small stream, running about three second feet, the diverted water being conducted from creek to water wheel, (through a settling basin and small reservoir) in an old wooden flume, from which water is constantly leaking. The capacity of the reservoir is sufficient to carry the plant, generating sixty-five horsepower, for a few hours only. Obviously, these conditions demand that the utmost care should be exercised to conserve the water supply and the water diverted, and the energy developed from these limited sources should be likewise conserved and made to perform its full duty and earn its full revenue for the benefit of all. Notwithstanding this necessity, and apart from the vicious discriminations always present when the same class of consumers is served in part on a flat rate basis and in part on a metered basis, (In re Gardiner Electric Light and Water Company, 13 M. U. R. 279, P. U. R. 1920-D 821), thirty-five of the seventy-eight electric patrons now receive service on flat rates, 44 per cent of the whole number as against 100 per cent on flat rates in 1915. Gross waste and extravagant use of energy flow directly from this practice. If patrons were restrained by the tell-tale meters, frugality, on the part of some, and at least reasonable economy, on the part of others in the matter of consumption of electric energy, would result in a demand commensurate with the supply, and consequent improvement in the service. We are satisfied that if all services were metered, and the order will require them to be metered, the existing water supply would be ample to carry the present connected load eighteen to twenty hours each day. The lack of mechanical automatic regulation of the voltage at this plant (and of a governor for the water wheel) is another condition partly responsible for non-standard voltage and sub-normal service. The owner attempts to standardize the voltage by personal observation of a voltmeter in the sitting room of his house, adjoining the power house, and under the same roof, and opening or closing the gate valve as the voltage fluctuates. This method is not satisfactory as the human factor in voltage regulation is not as dependable as mechanical appliances. A mechanical voltage regulator should be installed at once. The electric distribution system is greatly impaired; the utility was originally a direct current plant and when changed over to alternating current, much of the old wiring was left in place. There is very probably a heavy loss in distribution due to grounds. The master meter on the switchboard, now out of order and disconnected, should be repaired and connected as soon as possible. Without it, and metered services, the operator has

no means of accurately determining the losses in distribution and the cost of generating a kilowatt hour.

The foregoing review indicates, briefly, the principal causes for the present inadequate service. Correction involves the application of such elementary principles for proper operation of the system and the use of such indispensable mechanical devices that we trust the owner and operator will make further reference to the subject on our part unnecessary by immediately supplying the devices and instituting the practices commended. The order will require these things.

Now as to rates.

"The recurrent appeal to a just rate and a fair value assumes that the effort is to insure such a profit as would induce the venture originally and that the public will keep its faith so impliedly given. That, I think involves a tacit comparison of the profit possible under the rate with projects available elsewhere, i. e., under those competitive enterprises which offer an alternative investment. The implication is that the original adventurer would compare future rates, varying as they would with the going profit, and would find them enough, but no more than enough, to induce him to choose this investment. By insuring such a return, it is assumed that the supply of capital will be secured necessary to the public service. As the profits in the supposed alternative investment will themselves vary, so it is assumed to be a condition of the investor's bargain that their profit shall measurably follow the general rates."

Consolidated Gas v. Newton, P. U. R. 1920-F 483.

In addition to inducing the venture originally, continuing a fair return on the capital outlay, and providing for the natural exhaustion and disintegration of machines and processes, rates must persuade improvement and extension of the service whenever there is justifiable demand therefore, i e., additional capital outlay. The patrons of this plant, as the record plainly shows, are fully conscious of the exactions the service may and can demand and are willing to render a liberal tribute conditioned only on the receipt of reasonably adequate service and the approval by this Commission of the charges. Nothing in the record now before us, however, affords a reliable basis for the construction of a schedule of rates for this utility. We do not know how much current has been generated in any period, how much has been sold, how much has been lost in distribution.

This difficulty is increased by the fact that no other utility now operating under our jurisdiction is sufficiently similar, from an operating standpoint, to the Superior electric plant to be used as a tentative guide in the formulation of rates, nor are there any precedents in our reports or experience aidful in the premises. Gathering together all the data we have, namely, annual reports from 1915 to date, known operating conditions in 1920, the testimony at the hearing, and the agreed sale price for the electric plant in November, 1919, we have worked out a rate structure, to become effective on and after April 15, 1921, but in any event not before all services are metered, which we propose to test for a period varying from nine to twelve months, in our discretion and at the end of that time we should have a fairly accurate idea of the rate modifications necessary to meet all the demands.

The disposition we are forced to make of this matter now is born of necessity. We cannot apply the scientific principles of rate making at this time because the record presents no fact subject whereon those principles may be made to operate. We must develop the facts under our supervision, and then extend the principles to the facts found. The situation is a practical one, calling, first, for the improvement and perfection of the service, and after that for the establishment of proper rates. Compensatory rates may be claimed for reasonably adequate service; indifferent and deficient service brings no such reward. An appropriate order will be entered.

ORDER.

At a session of the Public Service Commission of Montana held in its office in the Capitol, Helena, Montana, on the 23d day of February, 1921, commencing at ten o'clock A. M. present, Chairman Dennis and Commissioners Boyle and Ross, in the matter of the application of Superior Electric Light and Water Works for an increase in its rates for electric service at Superior and Iron Mountain, Montana, Docket No. 779, this matter being before the Commission upon the application of the Superior Electric Light and Water Works, hereinafter referred to as the utility, and a full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings and conclusions therein, which said report is hereby approved and made a part hereof, and the Commission now being fully advised in the premises.

IT IS THEREFORE ORDERED (1) That the utility shall, on or before the 15th day of April, 1921, install on the premises of each consumer or patron a meter for meas-

uring the amount of electric energy consumed by such consumer or patron, separate meters for power and lighting, and that from and after the 15th day of April, 1921, no electric energy shall be sold under any circumstances to any patron or consumer save through a meter, and at the rates hereinafter prescribed; any and all flat rates shall be terminated and abrogated on or before April 15, 1921. (2) That the utility shall immediately install a proper set of plant records and a proper accounting system for all operations of the utility, in conformity with and pursuant to the Uniform Classification of Accounts prescribed by this Commission, and that the same be truthfully and regularly kept and continued. In all matters of accounting, the operations of the electric utility shall be kept separate, apart, and distinct from all operations of the water utility, and in the case of office overhead and superintendence proper and uniform allocation and segregation of said expenses shall be immediately effected, subject to the approval of this Commission. (3) That the utility shall install and maintain in perfect condition, at its power plant, a master meter, and that accurate readings therefrom shall be taken at least once in each thirty day period and a careful record kept thereof.

IT IS FURTHER ORDERED That on and after April 15, 1921, or as soon as each and every service is metered in accord with subdivision (1) of paragraph one, above, but **not before**, the utility shall charge the following rates for electric service, to-wit:

Commercial Lighting:

First	25 KWH used per month	18c per KWH.
Next	25 KWH used per month	16c per KWH.
Next	50 KWH used per month	14c per KWH.
Next	100 KWH used per month	12c per KWH.
Next	300 KWH used per month	10c per KWH.
	Additional KWH used per month	9c per KWH.

These prices to be net.

Minimum monthly charge \$1.50.

Power:

Motors \$1 per HP connected, plus the following sliding scale rates:

5HP or less 6c

10 HP 5c

All additional 4c

Consumers with more than one motor installed on single premises will be entitled to rate based on added horsepower of all motors.

IT IS FURTHER ORDERED That the utility shall immediately install a mechanical voltage regulator and keep the same proper workable condition hereafter, and, as soon as possible, a governor for the water wheel.

IT IS FURTHER ORDERED That the owner, manager and operators shall use every proper means, and exert every effort to provide adequate, reasonable and proper service for patrons at Superior and Iron Mountain, Montana.

IT IS FURTHER ORDERED That the Secretary of the Commission shall serve by mail a certified copy of this Report and Order upon the parties hereto and that said order shall be in full force and effect immediately upon said service.

IN RE BAKER NATURAL GAS UTILITY.

(Docket No. 778. Report and Order No. 315.)
(Hearing December 28, 1920. Decided March 31, 1921.)
(P. U. R., 1921-E, 609.)

Natural Gas Utility—Oil Development—Articles of Incorporation—Commencement of Public Service—Character of Company.

1. While some evidence in the record indicates that company's early motive was development of an oil field, specific profession of public service in articles of incorporation followed by actual undertaking of such public service a year after incorporation move the Commission to treat the effort from the first and in the main, as a public one.

Annual Reports—Weight—Not Binding on Commission.

2. While the annual reports of public utilities are constructed pursuant to the Commission's Uniform Classification of Accounts, entries in such reports will not be accepted by the Commission in a rate proceeding, without qualification. Such reports may be taken as prima facie true, but they embody, essentially, the company's own views of the requirements of the Uniform Classification.

Fair Return—Fair Value—Doctrine—Constitutional Basis.

3. The doctrine that a public service corporation is entitled to earn a fair return upon the fair value of its property dedicated to public use has become so firmly fixed in this class of cases as to amount to a rule of property, if not a principle of government, immutable as long as our present constitutional system endures.

Valuation—Items—Oil Rig Not Used—Cost of Wells.

4. Where company sold an oil rig subsequent to physical valuation of property by Commission and before rate hearing, same was eliminated from rate base as property no longer used or useful in public service. Utility not allowed to capitalize cost of drilling wells below depth necessary to develop natural gas in commercial quantities, where additional depth resulted from oil exploration.

Valuation—Gas Leaseholds—Methods of Valuation—Bases.

5. Various methods and criteria for determining value of gas leaseholds—prospect rights—of a natural gas utility examined. Value fixed by adding to actual cost of obtaining acreage now held for public service, a sum reasonably reflecting market value of such undrilled acreage in Montana at present time.

Valuation—Overheads—Organization—Expense—Working Capital—Going Concern Value.

6. Organization expense fixed at 20 per cent of capital aggregate for tangible values. Working capital fixed at 15 per cent of annual gross income from operation during 1920; going concern value fixed at 10 per cent of physical values plus organization expense and leasehold values.

Depreciation—Accrued—New Plant—Cost of Reproduction—No Present Deductions—Future Set Ups.

7. No deductions for accrued straight line depreciation were made from physical rate base of a natural gas utility for (a) the capacity of the plant, installed 1915-1917, is undiminished through five years' operations, and (b) because the present cost of re-

producing a plant of equal capacity is substantially in excess of the actual investment. Future annual depreciation set ups cut below company's rate, because such rate endeavored to recoup arrears.

Depletion—Theory of Allowance—Set Up.

8. Unlike other utilities operating, in theory at least, in perpetuity, with the recurring levy for renewals and replacements preserving the investment intact as a going concern, the natural gas utility suddenly ceases on the expiration of its natural stores, hence a depletion allowance must be made to restore the investment to the investors, otherwise there would be an end of natural gas development. The annual depletion set up, herein, fixed at 10 per cent of value of wells plus 10 per cent of organization expense and going concern value.

Natural Gas Utility—Rate of Return.

9. The decided cases justify a higher rate of return for a natural gas utility than for most other utilities because of the relatively short period for capital investment therein, and the unusual hazards attending operation.

Application by Montana Petroleum Company for an increase in rates for natural gas at Baker, Montana; general investigation into plant value, reasonableness of rates, rules, and regulations and adequacy of service. Values determined and rates prescribed.

Appearances: Loud and Leavitt, Miles City, for the applicant; Booth and McLemore, for the City of Baker, the consumers therein, and the C. M. & St. P. Ry. Co., D. R. Young, County Attorney, for Fallon County; J. H. Bonner, Engineer, and E. G. Toomey, Counsel, for the Commission. Before: Commissioners Boyle and Dennis.

By the Commission: By petition, filed December 9, 1920, the Montana Petroleum Company, a Montana corporation operating natural gas wells, seeks an increase in its rates for gas sold within the corporate limits of Baker, Montana, as follows:

Quantity				Present Rate	Proposed Rate
First	5,000	cu.	ft.....	40	80
Next	15,000	cu.	ft.....	35	70
Next	80,000	cu.	ft.....	30	60
Next	100,000	cu.	ft.....	22½	45
Next	150,000	cu.	ft.....	20	40
Next	300,000	cu.	ft.....	17½	35
Next	400,000	cu.	ft.....	15	30
Next	1,000,000	cu.	ft.....	12½	25
Next	2,000,000	cu.	ft.....	10	20

Petitioner alleges that in a period of about four years gas sales amounted to \$99,865.99, approximately 22 per cent of this income being derived from industrial sales to a carbon black plant; expenses for the same period, including depreciation and depletion, were \$84,057.16, leaving \$15,808.83 to be distributed on the corporate capitalization of \$200,000.00. Further alleging that "the actual cost of constructing the entire plant has been approximately \$100,000," the applicant concludes, "thus on the actual investment there has been a return of 3.16 per cent for each year" of operation. Compliance being made with Ex Parte Order No.

293, hearing was had on December 28, 1920. Protests against the proposed increases have been numerous and of varying force, and generally it is prayed that the present rates be reduced. Disposition of the matters involved has encountered delay because of the failure of the company to file its annual report for 1920 on or before March 15, 1921, (Chapter 186, Laws 1919), and further, by reason of the introduction in the seventeenth Legislative Assembly, in regular session during January and February, 1921, of a bill having a direct influence on this case, namely, Senate Bill No. 124 by Senator McCone, for an Act entitled "An Act for the protection and conservation of the supply of natural gas of the State of Montana, prohibiting the waste and wasteful use of natural gas through the burning or consumption thereof for the manufacturing or producing of carbon or other resultant products therefrom, prohibiting the taking, using, sale or other disposition of natural gas from gas wells for such purposes, and prescribing penalties for the violation of such Act." The bill became a law when approved by the Governor, on February 28, 1921, and will appear as Chapter 125, Laws 1921; Section 1, thereof provides:

"The use, consumption or burning of natural gas taken or drawn from any natural gas well or wells, or borings from which natural gas is produced for the products where such natural gas is burned, consumed or otherwise wasted without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes is hereby declared to be a wasteful and extravagant use of natural gas and is hereby declared to be unlawful."

Section 2 of the Act prohibits the use, sale or other disposal of natural gas, the product of any well owned, leased or managed by any person, for the purpose of manufacturing or producing carbon or other resultant products from the burning or consumption of such natural gas without the heat therein contained being fully and actually applied and utilized for other manufacturing purposes or domestic purposes. The law is identical with Chapter 125. of the Session Laws of Wyoming, 1919, save and except that the Wyoming enactment restricts its declarations to wells or other sources of supply located **"within ten miles of any incorporated town or industrial plant."** The Wyoming statute was upheld by the Supreme Court of the United States as an exercise of the State's police power compatible with the Federal Constitution in *Walls v. Midland Carbon Company*, decided December 13, 1920, by a divided court, (six to three) and now reported in 5 Adv. Ops. 133, January,

1921. Answering contentions of counsel for the company that the statute transcended well recognized limits of police exertion, Mr. Justice McKenna said: "The cited cases determine otherwise, and that as the State of Indiana could prevent the exhaustive use of gas in the production of oil, and as the State of New York could prevent the owner of land from using artificial means to obtain the carbonated waters under his land, the State of Wyoming has the same power to prevent the use of natural gas in the production of carbon black, the tendency of which is (it may be the inevitable effect of which is) the exhaustion of the supply of natural gas and the consequent detriment of other uses". In the face of this statement, and the penalties prescribed by Chapter 125, Laws 1921, and notwithstanding the difference in the Montana and Wyoming statutes, the Gas Products Company, a South Dakota corporation manufacturing carbon black from natural gas wells in the same general field occupied by the Baker utility quit its business about a week after the Montana act became effective. All calculations concerning revenues and rates for the future have therefore been made, as a consequence of the condition created by the state's action without reference to the revenues heretofore derived from the carbon black manufactures. The diminution is marked; for example, the revenue of two cents per 1000 cubic feet on gas from the utility's own wells in 1920, was \$2,144.79, and the royalty of one-half cent per 1000 cubic feet of gas from the Gas Products Company's own wells in 1920 was \$2,564.92. For the public benefit and economic salvage achieved by the enactment of Chapter 125, Laws 1921, there is some additional burden by way of increased rates as our investigations have developed and as appears infra.

(1) The Montana Petroleum Company was incorporated under the laws of Montana, June 16, 1915, with provision for a capital stock of \$200,000 of which \$5,000 was actually subscribed; on October 19, 1916, the corporation's capital stock was increased to \$1,000,000. While there is some evidence offered indicating that the company's primary motive was the development of an oil field and the commercial sale of petroleum, and the profession of a public service but a secondary or incidental purpose,—all this to minimize early organization costs, etc., articles of incorporation exhibit declarations evidencing specific intention to undertake a public service, to-wit: "to manufacture or produce gas by means of gas wells, and supply gas to the public generally by these or any other means" * * * to buy and sell, and if found expedient to build, own or operate any and all kinds of electric light and power plants or gas plants" * * * "to install, own, operate, buy and sell municipal,

electric and gas franchises." While it is true that actions speak louder than words in determining when a service becomes of public character, outweighing legislative fiat as well as self-serving assertions in this respect, the subsequent actions of the present company in actually undertaking a public gas service before the expiration of the year 1916, have influenced us to treat the effort from the first, and in the main, as a public one. We conclude that the company has at all times been a "public utility" within the meaning of Section 3, Chapter 52, Laws 1913, i. e., a private corporation owning, operating or controlling "any plant or equipment, or any part of a plant or equipment within the state for the production, delivery or furnishing for or to other persons, firms, associations or corporations private or municipal, heat * * * light * * * whether within the limits of municipalities, towns and villages, or elsewhere."

Valuation.

(2) From the annual reports of the company filed to date, there is found the utility's conception of its values and operations, and disclosed the growth of the service:

Year Ended	Cost of Plant and Equipment	Operating Revenues	Operating Expenses	Depreciation	Depletion	Taxes	Available for Return	Number Consumers	Population of Territory Supplied
6-30-17*	\$270,554.29	\$ 3,045.88	\$ 4,681.48	\$.....	\$.....	\$.....	\$ 1,635.60†	60	1500
6-30-18	296,721.39	23,403.04	14,528.99	6,019.81	.....	429.22	2,395.02	244	1500
12-31-18**	300,590.00	16,547.94	7,371.21	4,042.40†	.....	714.64	4,419.69	246	1500
12-31-19	309,243.09	38,296.19	14,307.28	6,198.53	2,748.24	957.97	14,084.17	270	1500
12-31-20	297,987.58	31,913.32	22,422.99	6,392.90	2,748.24	2,292.10	9,490.33	301	1200

*Company commenced sale of gas December, 1916.

**Six Months.

†Includes Depletion.

‡Deficit.

We say the "utility's conception of its values and operations," for while the annual reports of public utilities are constructed pursuant to the provisions of our Uniform Classification of Accounts, their entries are not, for that reason, to be accepted by us without qualification in a rate proceeding. Accounts kept with strict regard for the directions of the Uniform Classification may still depart from reality, and while we may take them, prima facie, for what they contain, they embody, essentially, the company's own views. State ex rel. Attorney General vs. State Board of Equalization, 56 Mont. 413, 452 and 453. Herein we have been aided in the

matter of values by the independent report and physical valuation of the Commission's chief engineer, by the opposing views and judgments of counsel for the municipalities and consumers affected, and by the testimony of witnesses at the hearing. From all these sources we think all relevant facts are before us, supplying the proper basis of consideration designated in **Simpson vs. Shepard**, the "Minnesota Rate Case," 230 U. S. 350. Counsel have been at some pains to cite cases reiterating the doctrine of **Smyth vs. Ames**, 169 U. S. 464, that the company is entitled to earn upon "the fair value of the property being used by it for the convenience of the public". We think it unnecessary at this date for counsel or the Commission in any case where the reasonableness of rates is in issue to do more than refer to the doctrine—if reference is ever necessary—for whether expressly mentioned or not, the doctrine has become so firmly fixed in this class of cases as to amount to a rule of property, if not a principle of government, immutable as long as our present constitutional system endures, and it must be articulate in any sound decision on the subject. For example:

- Smyth v. Ames**, 169 U. S. 464;
- Simpson v. Shepard**, 230 U. S. 350;
- San Diego Land and Town Co. v. National City**,
174 U. S. 757;
- Detroit, etc. Ry. Co. v. Michigan Railroad Com-**
mission, 171 Mich. 325;
- Darnell v. Edwards**, 244 U. S. 563;
- Wilcox v. Consolidated Gas Co.**, 212 U. S. 50;
- Knoxville v. Knoxville Water Power Co.**, 212 U.
S. 19.

Criteria for determining the ultimate fact value are various, none of outstanding materiality, and all of utility only if they contribute to a rational and just result. It is here frankly conceded that issued stock, \$196,000.00, represents a grossly excessive capitalization, and consequently, "under such conditions affords neither measure of, nor guide to the value of the property". 212 U. S. 19.

With the principle and its aids ever in mind we have considered the facts. Tangible values submitted are as follows:

	By the Company	By the Commis- sioners' Engineer	By Pro- testants
Land in fee	\$ 4,500.00	\$ 4,500.00	\$ 4,500.00
Bldgs., Fixtures & Grounds	210.00	332.18	210.00
Office Equipment	1,201.25	1,193.75	1,201.25
Drilling Equipment	12,628.82	none	none
Gas Wells			
Hitch Well No. 1.....	17,174.38	10,000.00	none or \$ 2,440.18
Hitch Well No. 2.....	3,682.39	3,682.39	3,682.39
Company Land Well No. 3....	1,897.44	1,890.09	1,897.44
Josselyn Land Well No. 4....	1,740.72	1,740.72	1,740.72
Moorhead Well	1,010.14	none	none
Murphy Well No. 1.....	631.50	631.50	none
Murphy Well No. 2.....	719.11	719.11	none
Murphy Well No. 3.....	626.71	626.71	none
Distribution System	24,720.33	24,409.47	24,720.33
	\$ 70,742.79	\$49,725.92	\$37,952.13 or \$40,392.31
Leases	211,000.00	10,000.00	none
TOTAL	\$281,742.79	\$59,725.92	\$37,952.13 or \$40,392.31

The values placed on land in fee, building, fixtures and grounds, and office equipment, the first three items enumerated in the table above, are conservative, influenced almost wholly by the actual cost of their acquisition, and in acquiring them a fair and reasonable price was paid; we accept the company's figures without further question, protestants likewise admitting their fairness. Objection is made to the allowance of the cost of an eighty-four foot steel rig for well drilling, namely \$12,628.82, for the reason that the company sold the rig in the summer of 1920, subsequently to our physical examination of February, 1920, when the item was listed among property used and useful. The objection is well taken, there now being no property of that character used by the company "for the convenience of the public." While we entertain no doubt of the propriety of a corporation engaged in supplying natural gas from natural gas wells possessing a drilling rig for cleaning out such wells or drilling others, we decline to add an arbitrary sum to the capital account for a rig not in use so far as the company is concerned; it will be time enough to determine its effect on rates when investment therein is made by the stockholders. As was said by the West Virginia Public Service Commission re Glenville Natural Gas Company, P. U. R., 1915 F, 848 at 852: "It is contended by petitioner that the amount it anticipates expending in the near future in the improvement if its plant should be taken into consideration in the adjustment of its rates. The Commission is of the opinion that it would be the better practice to wait until the improvements have actually been made, then, on proper application advance in rates could be considered."

There is considerable dispute as to the amounts properly assigned to capital outlay for the company's wells. Protestants contend that the sum of \$17,174.38 expended in drilling

Hitch Well No. 1, should be eliminated in toto for the reason that the well "was not drilled by the applicant in its capacity of a utility, but in its original role as a wildcat oil concern," or, as an alternative, that the cost of this well be reduced to the average cost of drilling the next three wells that followed, about \$2,440.18. For the company it is argued that "if well No. 1, had not been drilled, no actual knowledge of the formation at Baker or of the existence of gas in commercial quantities would have been available, because upon the information acquired in the drilling of this well, all subsequent development of the field has been based," and "gas from well No. 1, was used first in the drilling of the subsequent wells and no charge was made therefor on the books of the company." It seems clear from the evidence that gas in commercial quantities was found in this well at a depth of about 900 feet, but in the quest for oil, drilling was continued to a depth of about 2,300 feet. The first four hundred feet of casing in the well is fifteen and one-half inches in diameter, worth, at \$6.00 a foot, \$2,400, and the next seven hundred feet is protected by twelve and one-half inch casing, worth, at \$3.00 a foot, \$2,100. Because of the sandshale formation in the Baker field it was necessary in all drilling to "cement in" the casing from the surface of the ground to the bottom of the hole, eliminating any possibility of salvaging the casing material. Even though subsequent wells were lined with casing of smaller diameter we can not say that the employment of this large casing in the first well evidences such unsound judgment as to warrant us in reducing allowable casing costs fifty per cent or more. There had to be a start, and some experimentation was necessary; as long as it does not transcend the realm of fair adventure in enterprises of this sort, and assuredly it does not, consumers must share the burdens as well as the benefits of discovery. Manifestly the casing costs alone put protestants' valuation of \$2,440.18 out of rational view. Again, it is clear that this well was actually used for a year or more to furnish Baker consumers their supply, and now constitutes available reserve for the same purposes. In the interim it has been used as a producer for industrial sales to the carbon black plant, revenues from which sales have been credited to the utility's receipts. While we can not allow the company the full sum claimed for Hitch Well No. 1, because expenses incurred for a depth below nine hundred or a thousand feet, and after natural gas in commercial quantities was copiously available, were dedicated to oil exploration (re United Fuel Gas Co. 1918 C, 193 at 206, re Western Natural

Gas Co. 1919 B, 76) and to that extent went clearly beyond any necessary effort or experimentation for gas development, we find the reasonable value for that well in accord with the Chief Engineer's judgment to be \$10,000, and so capitalize it. Hitch Well No. 2, Company Land Well No. 3, and Josselyn Land Well No. 4, may be passed to the capital aggregate at \$3,682.39, \$1,897.44 and \$1,740.72, respectively, being the values (we would say "costs") submitted by the company, accepted as fair by protestants, and so confirmed by our inquiry. All concerned now agree that the costs, \$1,010.14, of drilling the Moorhead Well, located one hundred and fifty miles from Baker, and concededly an oil venture must fail, for the reasons named, of any recognition in this proceeding. Against protestants' argument that the bare cost of drilling the Murphy Wells, No. 1, 2, and 3, for the carbon black plant should not be capitalized because they "were put down upon leases of the Gas Products Company by the applicant on a basis of one-half cent royalty in payment for the drilling and from which the citizens of Baker have never received and will never receive any gas," we think it sufficient to oppose "the one-half cent royalty in payment for the drilling," for protestants make no mention of excluding it from the past revenues in measuring a fair return and its benefits have materially lightened the rate burden; that this revenue has now failed because of unforeseeable legislative action we think no more reason for eliminating the item of \$1,977.32 than the certain failure of any well furnishes ground for disregarding the costs of its creation. No one has heretofore suggested a segregation of industrial sales from commercial sales, and since industrial sales are now unlikely because of Chapter 125, Laws 1921, *supra*, it profits no one to go into the past for separating industrial costs and revenues. It matters not that Baker citizens never received, in the past, any gas from these wells; the utility received the revenues therefrom and these bore their proportionate share of expense. The value put on the distribution system, \$24,720.33, is limited almost to actual cost, and is, therefore, not questioned. \$1,172.43 must be added for capital additions since June 30, 1920, making \$25,892.76 for the distribution system.

What value, if any, should be assigned to the company's present leaseholds, is the most difficult question in this case. A value of \$211,000 was placed on the lease holdings aggregating 15,000 acres when the company was prospecting the Cedar Creek anticline for oil. Subsequent releases of these holdings had reduced the area to 1540 acres in February, 1920, when the Commission's engineer made his physical examination, and it appeared at the hearing in

December, 1920, that this area has since February, 1920, been reduced to 580 acres. Counsel for the utility argue that the company was and is justified in acquiring by purchase and lease, a larger acreage of lands in the vicinity of Baker than will supply the present needs of the city, particularly in view of the fact, well known to us, that the life of wells in the same geological structure is extremely uncertain and of short duration. For the protestants it is urged that the failure of the company to prove the "market value" of these leases, or submit any figures as to their cost raises a presumption that "the leases actually have no market value." This position is untenable, first, because reasonable rates can not be based on market value alone (Whitten, Val. Pub. Serv. Corp. Par. 57), second, because it overlooks the obvious, that is, that 580 acres of undeveloped gas leaseholds, prospect rights, in a "proven field," must have some value to this gas utility and third, because it assumes that the company's original claim of \$211,000 for 15,000 acres, or, roughly, \$15 per acre furnishes no basis of cost or value whatever. The subject has been variously treated. Where earnings scarcely exceeded operating expenses the Kansas Commission held that leaseholds had no present value, based upon past earning capacity, beyond a speculative one and the value of material in wells and warehouses. *Landon v. Lawrence*, P. U. R. 1916-B, 331, 344. The United States District Court for the District of Kansas in 242 Fed. 658, making permanent a temporary injunction theretofore granted against the rate established in this case by the Kansas Commission held that "the leaseholds should logically be valued, and this value amortized, and the valuation added to the capital account upon which returns should be figured," P. U. R. 1918-A, 31, 57. In *re Northeastern Oil and Gas Co.*, P. U. R. 1916-D, 692 at 697, the Ohio Commission, noting that it was "extremely difficult to find any fair basis on which to calculate the value of gas leases, and especially those covering undeveloped territory," determined "that whatever sums are necessarily expended for acquiring and holding leases upon a sufficient amount of territory to meet present demands and to make reasonable provision for the future should be treated as an operating expense." In *re Clarksburg Light & H. Co.*, 1917-A, 577, the West Virginia Commission, experienced in natural gas well valuations, assigned a value of \$6,000.00 each to 131 producing wells, allotting fifty acres of territory to each well, and for undeveloped territory said to comprise from 400 to 1,300 acres, a lump sum of \$25,000.00. Recognizing the property element in leaseholds, their taxability and marketability, the Commission saw no reason why such leaseholds "should not be taken into consideration in fixing the value of

a utility's property for rate-making purposes, although that value may be vague and uncertain to a considerable extent." In re West Virginia Central Gas Co., P. U. R. 1918-C, 453 at 463, the same Commission likewise noting the difficulty of the problem, declared the utility "should be rewarded for the business acumen and foresight of its officers and agents" in obtaining and developing leaseholds, "but the consumer is entitled to receive some credit for the delay rentals which had been included in operating expenses and paid by him," and allowed a value of \$50.00 per acre on all leaseholds, both operated and undrilled, and variously estimated to be worth from \$30.00 to \$100.00 per acre. Unwise and reckless expenditures in purchasing leases, were of course properly eliminated from the capital account by the Oklahoma Commission in re Western Natural Gas Co., P. U. R. 1919-B, 76 at 78. The New York Public Service Commission for the Second District in re Iriquois Natural Gas Co. P. U. R. 1919-D, 76, after a review of the foregoing cases and others concluded: "The expenditure of the money of the corporation for gas leases is of course a legitimate capital expenditure; but to swell the capital account by reason of gas produced by the corporation on such leases would seem to be inadmissible." The two West Virginia decisions just cited, however, were, **on the question of the valuation of leaseholds**, expressly disapproved by the West Virginia commission in re United Gas Co., P. U. R. 1920-C, 583, after an elaborate examination of the authorities and consideration of the nature of a gas leasehold. "Our conclusion," said Wiles, Chairman, "therefore, is to allow the applicant to include as a part of its capital investment **the actual cost of obtaining the gas acreage it now holds**, upon which it will be permitted to earn a return until such time as the same shall be authorized and wiped out as a capital charge," and this decision was extended "to the applicant's entire investment in unoperated acreage."

To "the actual cost of obtaining the gas acreage **it now holds**," about 580 acres, and, therefore, excluding all costs for the 14,000 acres or more no longer held and apparently never necessary for public purposes, we think should be added a sum reasonably reflecting present market value for undeveloped and undrilled acreage. We can not close our eyes to the fact that these leases in Montana have today a more or less definite market or exchange value, not necessarily related to their potential wealth producing ability under fair rates. What they will or may produce, and earn, is recognized as too remote to warrant a guess at proper capitalization, but as "potentials" they have a present value, and whatever that value is, their owners may capitalize and if the owners are engaged in a public service and

the raw acreage is held for that service it is a proper capital charge therein. After inspection of cost records and careful consideration of present day exchange values we shall allow \$11,600.00 for the 580 acres now held, or, at the rate of \$20.00 per acre. This makes a total of \$62,761.88 properly assignable to the capital aggregate for tangible values, or for physical values plus leaseholds.

The only item of intangible value dispute between the applicant and remonstrants is that of \$27,696.98 for "organization expense" challenged as "much too large" by the latter, and not adequately proved by the former. From our inspection of cost records and these are not illuminating, we are satisfied that the sub-items of \$9,173.-65 for commission, \$4,160.88 for general expense and \$3,783.-32 for depreciation, all under the head of organization expense reflect oil boom efforts and must be pared down accordingly. The term "organization expense" as here used includes legal and incorporation expenses, construction administration, construction interest, insurance and taxes, traveling, advertising, etc., and moving on the theory that these charges should be allowed only to the extent necessary for the organization of the company as a public utility, thus eliminating the early oil influence, and for lack of better information respecting the precise charges here, but bearing in mind legitimate charges in like instances, we shall allow 20 per cent of the \$62,701.88 above to cover all the items comprehended under "organization expense" here, or \$12,540.37; but this percentage is not to be taken as a precedent.

For working capital, we shall allow fifteen per cent of the annual gross income received from operation, taking the year 1920 for the base, an allowance somewhat larger than customarily made, but increased here because of the high and constant degree of care and vigilance required in the operation of this natural gas plant. (In re Helena Light and Railway Company, 13 M. U. R. 191, 216, 217; P. U. R. 1920-D, 668). This percentage adds \$4,786.98 to the capital aggregate.

What is said in the Helena case, supra, about "going concern value" must stand in justification of an allowance for such an item here, where we are appraising a utility in manifestly successful operation. "Since these decisions (Des Moines Gas Co. v. Des Moines, 238 U. S. 153, and Denver v. Union Water Co. 246 U. S. 178) there can be no question of our duty to make an allowance for "going concern value" in a rate case involving an established utility, and here we must be careful to determine what going concern value is: 'The value which inheres in a plant where its business is established, as distinguished

from one which has yet to establish its business'. The test is whether the bare bones are assembled in place, connected to function and under human management, in motion rendering service to a dependent clientele. Neither the absence of good will nor of remunerative returns necessarily disparages the reality of going concern value. Consumers may be positively hostile to the plant which may just be able to meet operating expenses, and yet the plant possess 'going concern value' because its business is established". In the Denver case, where the special master found the entire value of the water plant, then a tenant at sufferance in the Denver streets because its franchise had expired, to be \$13,415,899 and allowed \$800,000 for going concern value, the Supreme Court of the United States approved the allowance. While, so far as we know, no student of the problem has suggested a rational device for translating "established business" value into dollars as units of value, we shall follow the rule more or less definitely discernable in the decisions, of adding ten per cent to the determined physical values and in this case we shall include the leaseholds and organization expense. This will amount to \$7,524.22, making a total of \$87,553.45 which we find to be the fair value of the property devoted to public service.

Depreciation and Depletion.

From the physical rate base, we shall make no deductions for "accrued depreciation", first, because the capacity of the plant, all of which has been lately installed, 1915, 1916, and 1917, is undiminished through five years' operations, if not actually increased, renewals where necessary fully abating past depreciation; and second, because we think it not open to the slightest doubt that the present cost of reproducing a plant of equal capacity is substantially in excess of the actual investment here, shutting the doors against any suggestion of straight line depreciation. If accrued straight line depreciation were to be deducted from reproduction cost, there would, in our judgment, be no impairment of the value we find for the physical rate base. (See: *Consolidated Gas v. Newton*, P. U. R., 1920-F, at 483, 494, 581, 582, the most satisfactory discussion and courageous disposition, by a court, in this field of law in a decade). Throughout this proceeding the tendency has been toward the formulation of a rate base from original cost, reproduction estimates being unnecessary because of cost records available to us, and the relative newness of the plant. A convincing evidence of the difference in values is shown in the case of the drilling equipment which belonged

to the company. Purchased in 1915, it cost \$12,628.82; sold in 1920, after at least three years' use it brought \$20,000.00. If the last figure be taken as reproduction cost and \$1,260.00 per annum be deducted for each five years the equipment was in the company's possession, as straight line depreciation, the depreciation value would still exceed actual cost, a pertinent demonstration of the validity of a judgment which refuses accrued depreciation any force under such circumstances. On the other hand, to proceed on the reproduction theory alone in this case, ignoring the reality of cost records would produce results grossly inequitable to the plant's patrons for the reasons set out by Justice Hughes, referee, in Brooklyn Borough Gas Co. v. Public Service Commission, P. U. R. 1918-F, 428; P. U. R. 1919-D, 226; P. U. R. 1920-A, 434. In re Rehearing, Helena Light and Railway Company, 13 M. U. R. 261, 267.

Prior to July 1, 1917, the company made no deduction from revenues on account of depreciation and prior to December 31, 1918, no separate deduction for depletion. Since that time the following percentages of "cost" have been deducted for depreciation. Buildings and fixtures, 10 per cent; drilling apparatus, 25 per cent; mains, 10 per cent; regulators, 20 per cent; meters, 20 per cent; buildings, regulator houses and curb boxes, 25 per cent; general office equipment, 10 per cent. These rates reflect an attempt, we believe, to collect arrears in depreciation and depletion before July 1, 1917 and December 31, 1918, respectively; any arrears have certainly been wiped out by now and in any event some of the allowances are too high, remembering their relation to the probable life of the wells, and in the case of drilling apparatus heretofore sold, improper for any period after sale. Depreciation for buildings and fixtures should be provided for at 5 per cent per annum on \$210.00, or \$10.50; 10 per cent for mains, or \$2,090.58 on \$20,905.78 is fair; regulators should not bear more than 10 per cent, or \$118.54 on \$1,185.38; meters not more than 10 per cent on \$3,679.82, or \$367.98; regulators and curb boxes ten per cent on \$122.18, or \$12.21 per annum, and these items with \$120.60, being ten per cent on the cost of general office equipment, \$1,205.95, make a total annual allowable deduction for depreciation of \$2,720.41.

To depreciation set-up, and as a proper charge against revenue, must be added something for depletion, for the exhaustion of the natural element forming the chief property of the company as that exhaustion affects the capital outlay made in its production, that is, the well costs. The amount of this natural property in any given well in

operation being itself impossible of ascertainment, constantly being consumed in use and innately incapable of reproduction by human means, furnishes no standard for computing its own disappearance or intrinsic value. It becomes necessary, then, to look at other natural gas wells in the same geological structure, and from their production, at a known rate in a given time, after they have ceased, obtain a yard-stick for computing the life of the wells in controversy, and, therefore, the time in which the expenditures made in their development will be reduced to junk value or cease to possess any value. In this case the casing for the wells will not have a junk value, the necessity of cementing it in from the surface to the bottom of the hole making removal of any appreciable quantity financially unfeasible; accordingly, we think all other well expenditures must in this case be held to disappear, being incidental to the drilling operation, and the drilling rig having been sold. That the depreciation of a natural gas plant is more rapid than that of other utilities, and that stockholders in a company operating such a utility are entitled to receive, annually, during the life of the utility a sum which, properly invested will amount, when the end comes, to at least the investment in the plant, has been uniformly recognized. Depreciation and depletion in a utility of this nature are an amortization charge. Were this not so the stockholders would lose their investment and be obliged to content themselves with the interest they had received thereon. Unlike other utilities operating, in theory at least, in perpetuity, with the recurring levy for renewals and replacements preserving the investment intact as a going concern, the natural gas utility suddenly ceases on the exhaustion of its natural stores, and its appliances are rendered useless for their original uses. Unless there has been accumulated a money reserve in a depreciation and depletion fund equal to the investment the stockholders must pocket their losses, and, under regulation, this means an end of natural gas development for public uses. *Re Clarksburg Light & H. Co.*, P. U. R. 1917-A, 577, 605, 606. "Because of the fact that this property is viewed as having a short term life, the function of the depreciation reserve seems to me, in this case, to be not so much to replace the property as worn out and thus to keep the investment intact, as to restore the investment to the investors. In restoring the investment, the company's obligation naturally goes first to its creditors, and second, to its stockholders"—Thelen, Commissioner, in *re Valley Natural Gas Co.* P. U. R. 1918-C, 1, 3. And see the discussion in *re United Fuel Gas Company*, P. U. R. 1918-C, 193, 224, 225.

The company has been making a distinct depletion charge on well costs of 10 per cent per annum since January 1, 1919, and since it included well costs by us disallowed we think arrears for 1917 and 1918 have now been extinguished. After careful inquiry into all known facts pointing to the probable life of these wells, including the knowledge of the Glendive field, similar in character, we conclude that such a charge is reasonable, and based on the value we have assigned to the wells in use and useful, \$19,297.87, the annual set up will be \$1,929.78, plus ten per cent on the overhead of \$12,540.37 or \$1,254.03 and ten per cent on the going concern value of \$7,524.22 or \$752.42, making a total annual charge for depreciation and depletion of \$6,676.64.

Rate of Return.

The decided cases justify a higher rate of return for natural gas utilities than for any other utilities because of the relatively short period for capital investment therein, and the unusual hazards attending operation and this notwithstanding these factors are given weight in the allowances for depreciation and depletion which allowances must be borne by the rates charged for the service. We know of no sound reason for denying the application of these decisions to this case to the extent of three or four per cent beyond the rate of return found fair for other investments, having regard to all the elements comprehended in a "fair" return and reasonable rates. (*O. J. Lien v. Superior Electric Light and Water Works*, 14 M. U. R., decided February 23, 1921). Eight per cent seems now to be the minimum for all ordinary public utility investments in our jurisdiction, (*In re Missoula Street Railway Company*, 14 M. U. R., decided December 7, 1920) and eleven or twelve per cent can not be too much for a capital outlay of many thousands of dollars in materials and appliances which may be reduced in value to zero "in the twinkling of an eye". If natural gas, "the cleanest and best natural fuel known to man" is to be put to its highest use, household consumption), efforts in this behalf must be liberally rewarded (*U. S. Dept. Interior, Bureau of Mines, Tech. Papers*, 40-69, p. 19), and this has been done quite uniformly and without support from "war causes".

Re Boliver v. Empire Gas & Fuel Co. (N. Y.) P. U. R. 1919-C, 115; Re West Virginia Central Gas Co. (W. Va.) P. U. R. 1918-C 453; Re Ashtabula Gas Co. (Ohio) P. U. R. 1917-D, 790; Re Montgomery Gas Co. P. U. R. 1917-C 924; Re West Side Gas Co. (Cal.) P. U. R. 1916-A, 276; Landson v. Lawrence (Kan.) P. U. R. 1916-B, 331;

Re Bridgeport Natural Gas & Oil Co. (W. Va.)
P. U. R. 1916-C, 253; Re Glenville Natural Gas
Co. (W. Va.) P. U. R. 1915-F, 848.

Generally on this subject the Supreme Court of the United States has said: "And it is equally well known that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago furnishes no safe criterion for the present or for the future." *Lincoln Gas & Electric Lt. Co. v. City of Lincoln*, 250 U. S. 256, 268.

Future Revenues and Expenses.

The record contains nothing to show that operating revenues from commercial earnings will be increased in 1921 over the 1920 experience by reason of new business; nor is there aught that points to a decrease. Subtracting \$4,709.71 in earnings from the carbon gas plant, from 1920 revenues, earnings for the ensuing twelve months on the present rate schedule should approximate \$27,203.61. Expenses we estimate as follows:

Production and distribution expense, same as 1920, \$10,989.75; depreciation and depletion on new depreciable base, \$6,676.64; taxes same as 1920, \$2,292.10; making a total of \$19,958.49, leaving \$7,244.12 for a return on the investment, about 8 per cent per annum on \$87,553.45, which we find to be too low in this instance. The present rates must, therefore, be held unreasonable and should be increased, we find, approximately ten per cent to meet the requirements of a fair return. This increase will add approximately \$2,726.36 to the anticipated revenues for the ensuing twelve months, and produce a return of about 11 per cent per annum on the rate base of \$87,553.45, which we find to be reasonable. In this connection we are of the opinion that the blocks of the proposed schedule should be modified by the introduction of two new blocks of 40,000 cubic feet each between the present 15,000 and 100,000 blocks. At present for example, a patron consuming 21,000 cubic feet of gas pays \$7.25 for the first 20,000 cubic feet and 30 cents for the next 1,000 cubic feet, while a patron using 100,000 cubic feet pays \$7.25 for the first 20,000 cubic feet and 30 cents per 1,000 cubic feet for his 80,000 cubic feet. This spread we believe is unjust to the large consumer, and furnishes no incentive for increased use of the commodity.

The present minimum charge of fifty cents per month is too low, sufficing only to meet the interest charge on the meter and service pipe investment for each consumer,

without any allowance for depreciation, meter reading and collections. It will be increased to 75 cents per month. (In re Plentywood Electric Company, 13 M. U. R. 174, 180, 181; P. U. R. 1920-C, 676).

The record contains considerable testimony in the matter of the advantage to the consumer in buying gas at low pressure rather than at high pressure. It was generally insisted that a meter reading of gas measured at high pressure would show a greater quantity of gas consumed than a meter reading at low pressure. Subsequently to the hearing we conducted a ten day public test connecting one meter direct to the service pipe so that the gas measured through this first meter (sealed) would flow under the normal two pound pressure, and after the gas had passed that meter it was reduced, by a governor, from two pounds to one-half pound pressure and run through the second meter (sealed) to a stove where it was consumed under actual service conditions. At the end of ten days the high pressure meter, No. 1 read 12,000 cubic feet and the low pressure meter, No. 2, read 13,400 cubic feet. This is to be expected, as gas will always expand as the pressure is reduced, i. e., one cubic foot under two pounds pressure expands to 1.1 cubic feet under one-half pound pressure. There is a greater tendency for waste on the part of the consumer under high pressure, and as a rule more gas is used than is required. We are convinced that the company is not obtaining any undue advantage from carrying two pounds pressure, especially during the heating season, October 1st to May 1st, inclusive, with a pressure variation during each twenty-four hours of not in excess of one-half pound.

It appears that the utility charges a service deposit of \$10.00 per consumer, there now being a fund of approximately \$3,000.00 from this source. Any excess in this deposit over the sum allowed by Rule 31 must be refunded forthwith, and the deposit hereafter exacted in strict conformity with the rule, which provides as follows:

“(a) Each utility may require from any consumer or prospective consumer a deposit intended to guarantee payment of current bills. Such required deposit shall not exceed the amount of an estimated forty-five day's bill of such consumer, provided, however, that no deposit shall be required of the owner of the property served with gas. Interest shall be paid by the utility upon such deposits at the rate of six per cent per annum, payable annually, for the time such deposit was held by the utility and the consumer

was served by the utility, provided such period was not less than six months."

An appropriate order will be entered.

ORDER.

At a session of the Public Service Commission of Montana held in its office in the Capitol, Helena, Montana, on the 31st day of March, 1921, commencing at ten o'clock A. M., present Chairman Dennis, and Commissioners Boyle and Ross, in the matter of the application of the Montana Petroleum Company for an increase in its rates for natural gas at Baker, Montana, Docket No. 778, this matter being before the Commission upon the application of the Montana Petroleum Company, hereinafter referred to as the company, and a full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings and conclusions therein, which said report is hereby approved and made a part hereof, and the Commission now being fully advised in the premises,

IT IS ORDERED That the application of said company be, and it is hereby granted in modified form and to the extent of an increase of approximately ten per cent in its present rates, and that, accordingly, the company shall, not later than the 15th day of April, 1921, file with this Commission its tariff embodying the following rates for sales of natural gas, and on scheduled steps as follows:

	Quantity		Per 1,000 Cubic Feet
First	5,000 cubic feet.....		44 cents
Next	15,000 cubic feet.....		38½ cents
Next	40,000 cubic feet.....		33 cents
Next	100,000 cubic feet.....		27½ cents
Next	150,000 cubic feet.....		25 cents
Next	300,000 cubic feet.....		19 cents
Next	400,000 cubic feet.....		16½ cents
All additional	cubic feet.....		14 cents
Minimum monthly charge 75 cents			

Discount of 10 per cent for all bills paid on or before the 10th of the month following the charge; and the same shall be in full force and effect and constitute the legal charges for all natural gas sold by the company immediately after the close of the meter-reading period for the month of April, 1921, and until the further order of this Commission.

IT IS FURTHER ORDERED That the company shall forthwith refund to each consumer who has heretofore made a service deposit, any and all sums in excess of the amount allowed by this Commission under and pursuant to Rule 31, Gas Standards, p. 10 and 11, Public Service Commission of Montana, as a deposit to guarantee payment

of bills, and that hereafter no sum or deposit of any character shall be exacted from any consumer save in accord with Rule 31 aforesaid.

IT IS FURTHER ORDERED That the Secretary of this Commission shall forthwith serve by mail, a true copy of this Report and Order upon each of the parties hereto, and that the same shall be in full force and effect according to its terms, upon said service.

CITY OF BUTTE vs. BUTTE ELECTRIC RAIL- WAY COMPANY.

(Docket No. 782. Report and Order No. 316.)
(Hearing March 18, 1921. Decided April 23, 1921.)
(P. U. R. 1921-C, 857.)

Street Railway—Rates—Reduced Fares for School Children—Basis for Proposed Reduction—Discrimination.

1. The Public Service Commission has no power to prescribe a lower street car fare for school children between 13 and 17 years of age in the City of Butte, Montana, because the community is suffering from complete industrial paralysis. Such a condition, if a valid reason for reduced fares for one class of car riders, is equally potent for all car riders, hence to confine the reduction, for the reason advanced, to one class of car riders would be to initiate unlawful discrimination.

Rates—School Children—Reason for Reduced Fares—Future Action.

2. Reduced street railway fares for school children during school hours, are based on those principles of public policy, which aim to create inducements to seize public school advantages and recognize the equitable claims of a class of constant car riders. When such reasons are advanced for fare reductions for school children, the Commission may require their recognition by responsive tariffs. (Obiter).

Rate Trial—Composure—Disturbance.

3. A rate schedule initiated in November, 1920, as a frank endeavor to ascertain some standard of reasonableness for street railway service in a community, should not be disturbed in April, 1921, by the introduction of a special fare producing a loss of three-eighths of the present revenue from the same source, for such trial schedule has not been in vogue long enough to hazard a guess at its propriety, and such a disturbance would militate against the value of the experiment.

Petition by the City of Butte, Montana, for an order establishing a five cent street car fare with transfer privileges for students between the ages of thirteen and seventeen years. Denied.

Appearances: For the City of Butte, R. L. Clinton, City Attorney, and E. D. Elderkin; for the defendant, Sidney Sanner and J. F. Furman; for the Public Service Commission of Montana, E. G. Toomey, Counsel. Before: Commissioners Boyle and Ross.

By the Commission: By a petition filed here on January 20, 1921, the complainant, a municipal corporation, alleges, inter alia, that the inhabitants of Butte, Montana, are more or less dependent upon the copper mining industry, that the wages of all miners and craftsmen affiliated with the mining industry have been or will be reduced one dollar per day, the general scale moving from \$5.75 to \$4.75 per day, and "that owing to the high cost of living, clothing, and all necessities, and consequent reduction in wages, it will be quite a hardship to many families to send their children to school who will, among other things, be compelled to pay the present street car fare of 8 cents cash, and that if a 5 cent street car fare could be fixed by this Honorable Board for students within the ages of 13 to 17 years with transfer privileges, it would certainly assist and encourage keeping these children in school." By answer filed January 29, 1921, the defendant company confesses the material fact allegations of the petition, but prays that this Commission "do nothing herein" until the expiration of a sufficient trial period for existing rates, or a change in existing conditions makes an investigation of the entire matter of rates, schedules, tariffs, and regulations expedient and advisable, particularly emphasizing the necessity for preserving the status quo of the experimental rate structure which became effective November 15, 1920, to continue until June 30, 1921. At the hearing the testimony partook largely of the nature of a commentary on the existing industrial depression in Butte, witnesses stressing, and it may be said not overdrawing, the economic situation there prevailing in consequence of the wage reduction in the face of living costs which lag behind on higher levels. Since the hearing, stagnation has overcome the depressed pulse of the Butte copper industry, whereon the community leans, for on or about April 1, 1921, the mining companies, generally, ceased operating, and it would be hard now to conjecture a more complete departure from normalcy. After careful review of the record we think it may be said without fear of substantial contradiction, that the unfortunate business conditions just adverted to, and not primarily or even in large part the promotion of education, motivated the present application. It is obvious from the testimony, not by plain inference, but by the unequivocal declarations of the witnesses, that a very small percentage of children, if any, between 13 and 17 years of age resident in outlying precincts do not now attend school because of alleged oppressive car fares. Five cents is the fare suggested as against the eight cent fare now prescribed. Assuming two trips daily, the difference of six cents a day, or thirty

cents a week for each child scarcely seems of sufficient vitality, *per se*, to preclude absolutely, attendance at school, and it is this conclusion that the record sustains. Of course the families wherein there are students are "hard hit", and youngsters may have to be taken from school to serve as casual breadwinners because of the cessation of employment, but the point here is that the same cause is adversely striking at all the members of the community rendering them all the less able to pay existing fares. Convinced as we are that the real reason offered by petitioners for the proposed discrimination in the existing rate structure is the overwhelming industrial distress, and not the creation of an inducement to seize public school advantages, or the recognition of the claims of a class of constant car riders, we are not called upon to decide, and may put out of view for the present the question as to our power to introduce a special fare for students and the matter of effecting proper solution of the administrative difficulties involved, were such a fare determined upon; however, the question of our authority to discriminate between passengers over twelve years of age is by no means free from doubt.

The case then, comes to this: Have we the power to prescribe a lower street car fare for school children between 13 and 17 years of age in Butte, Montana, because the community wherein they reside is suffering from complete industrial paralysis? To state the proposition is to answer it. If the reason is good for the class named, it must suffice for all car riders in Butte, since they all are, confessedly equally affected. This being true, to prescribe the rate for the benefit of the particular class would be for us to create an unjust discrimination in open violation of the law confided to our keeping (Chapter 52, Laws 1913). We might stop here so far as the precise question now before us is concerned, but two additional considerations germane to the general subject should not be overlooked.

The constitution, protecting the company's right to a fair return on the fair value of its property devoted to the public service, stands unmoved, unshaken by the chaotic winds of post-war distress. The utility insisting upon its rights thereunder, we are not at liberty to reduce rates in response to unfortunate economic conditions rendering patrons less able to pay the rates, but at the same time not depressing operating expenses. Re Juneau Telephone Company, P. U. R. 1921-B, 382. There is nothing in the record to show that the company's costs of operation are materially lower though real economies have been effected, and we know it has not accumulated a surplus now available to fill additional deficiencies which would most certainly result

from concessions in the way of reduced fares. The company may waive its right to a reasonable return, but that is a different thing from asking us to compel it to take a loss. Petitioner's case is made up without thought of the company's rights under the law, and the experience recorded since November, 1920. Under the present eight cent cash fare, this condition has resulted:

	November	December	January	February	March
Operating Revenues.....	\$55,306.23	\$56,738.62	\$52,244.69	\$45,332.11	\$48,195.30
Operating Expenses					
Taxes & Depreciation	50,821.38	52,663.76	49,424.97	42,922.27	46,196.66
Gross Income.....	4,484.85	4,074.86	2,819.72	2,409.84	1,998.64
Per Cent Return on					
\$1,558,000.00*	.00287	.00261	.00181	.00154	.00128

*Valuation found by Commission in 1919.

The foregoing sufficiently demonstrates the present constitutional impossibility of introducing rate reductions, for whatever force is to be given to the principle that a just rate must take account of "the value of the service to the public" (*Covington, etc. Co. v. Sanford*, 164 U. S. 578), it cannot be said that the latter principle destroys the fair return principle, i. e., while the service may be worth nothing to a man who cannot pay, the utility can not be compelled to meet his necessities.

The remaining consideration is that this Commission, upon a full consideration of the facts known to it, in November, 1920, authorized a rate of eight cents for all persons over twelve years of age, said rate to expire by limitation on June 30, 1921. This rate is experimental (all rates are when originated) in the sense that it is a frank endeavor to ascertain some standard of reasonableness for the Butte situation, long in a state of rate flux. It has not been in vogue long enough to hazard a guess at its propriety, (not to mention the effect of the abnormal conditions under which it has operated) and were we to introduce now a special fare producing a loss of three-eighths of the present revenue from the same source, we would destroy the whole purpose of our effort. All rates not clearly confiscatory should be given a fair trial without intermittent disturbances. The Supreme Court of the United States has made this plain: *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, 16, 18; *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 54; *Minnesota Rate cases*, 230 U. S. 352, 469-72; *Rowland vs. Boyle*, 244 U. S. 106; *Darnell v. Edwards*, 244, U. S. 564; *Lincoln Gas Co. v. Lincoln*, 250 U. S. 256, 262; And see *Municipal Gas Co. v. Public Service Commission*, 225 N. Y. 89, 98, 121 N. E. 772; *Consolidated Gas Co. v. Newton*, P. U. R. 1920-F, 483, 490. We shall follow the rule by entering an order denying the prayer of the complaint with the proviso that it may be reinstated on our motion

as a bona fide students' fare proposition when the experiment is concluded and we come to construct something in the nature of a more or less permanent rate structure.

ORDER.

At a session of the Public Service Commission of Montana held in its office in the Capitol, Helena, Montana, on the 23d day of April, 1921, commencing at ten o'clock A. M., present Chairman Dennis, and Commissioners Boyle and Ross, in the matter of the petition of the City of Butte, Montana, for an order requiring the Butte Electric Railway Company to maintain a five cent student's fare for children between 13 and 17 years of age, Docket No. 782, this matter being before the Commission upon the petition of said City of Butte and the answer of said company, and a full investigation of the matters and things involved having been had, including a public hearing on the issues, and the Commission having on the date hereof made and filed of record a report containing its findings and conclusions therein, which said report is hereby approved and made a part hereof, and the Commission now being fully advised in the premises,

IT IS ORDERED That the petition of said City of Butte be and the same is hereby denied, subject to reinstatement on the motion of this Commission when the matter of the establishment of a more or less permanent fare shall be considered.

IT IS FURTHER ORDERED That the Secretary shall serve by mail a true copy of this Report and Order upon each of the parties hereto, and that the same shall be in full force and effect forthwith.

IN RE ELECTRIC SERVICE AND RATES AT EUREKA, MONTANA.

(Docket No. 783.

Report and Order No. 319.)

(Hearing April 26, 1921.

Decided June 17, 1921.)

Electric Utility—Lumber Mill—Rates—Discrimination.

1. A lumber corporation owning an electric utility must charge itself with all energy used, at the regular tariff rates, and any departure therefrom constitutes an unlawful discrimination. The owner of a public utility stands in the same relation to it, so far as rates governing the use of its product are concerned, as any other consumer.

Rates—Free Service—Discrimination.

2. Free service to any person is an unjust and unlawful discrimination, and must be eliminated.

Meter Reading—Deposits—Corrections.

3. Violations of Rules 5 and 11, Commission's Standard Rules and Regulations Governing Electric Service, pointed out, and cessation thereof ordered.

Inquiry into the Reasonableness of Rates, Rules and Regulations of P. L. Howe Lumber Mills in the City of Eureka, for Electric Service. Rates prescribed; remedial recommendations submitted.

Appearances: Noffsinger and Walchli, for the utility; O. F. Wolf, Mayor, for the City of Eureka; J. H. Bonner, Chief Engineer, E. G. Toomey, Counsel, for the Commission.

Before: Chairman Dennis and Commissioner Ross, at Eureka.

By the Board: This investigation was begun in March, 1921, after the utility had filed with the Commission, a revised schedule of rates superseding all previous schedules, purporting to effect a reduction in metered service and eliminating all flat rates with the exception of municipal street lighting. The Commission authorized, effective service March 1, 1921, the proffered lighting schedule for metered service, withholding certification of all other schedules, and notifying the utility that an investigation and hearing would probably be necessary before finally determining what the rates should be. Accordingly, the Commission's chief engineer, J. H. Bonner, made a preliminary inspection in April, 1921, of the plant and equipment employed in the production and distribution of electricity.

The P. L. Howe Lumber Mills, a Montana Corporation, hereinafter referred to as the utility, is essentially engaged in the manufacture of lumber, having an annual capacity of 60 million feet. In addition to the saw-mill, a planing mill is operated by this company, and it is located approximately two thousand feet distant from the saw-mill, each having a separate steam power plant. The fuel used consists of slabs, edgings, sawdust, "hog-feed," etc., the by-product of the corporation's main industry—lumbering. The electric light plant is located in the power plant of the planing mill. The entire premises of the utility are well lighted by electricity, and dating back to 1909, current has been furnished to employees and a few others, some on flat rates and some free of charge, or at least for no direct compensation. The demand for service by the people has increased with development of the community, until at the present time there are 259 consumers, and all municipal lighting is furnished by the utility. Not until May 1, 1920, were meters used, and on the date of this hearing, April 26, 1921, there were still 44 consumers being served on a flat rate basis. As a matter of fact not until January, 1921, was it possible to determine a reliable segregation of current between commercial users and current used by the utility on its own premises, inasmuch as master meters

were not installed until the date last above mentioned. In other words there has not been, nor is there now, any record that shows for a sufficient period of time, the quantity of electric energy that has been produced, sold, given away, wasted, or used by the utility in the conduct of its own business. It is, therefore, obvious that we have not before us the fundamental factors on which to base a comprehensive rate structure; the production and consumption of current has been an unknown quantity.

Investment.

For rate-making purposes the utility places a valuation on that portion of its plant devoted to the electric department, of \$53,000.00, in round figures. This sum is arrived at on what is known as the "proportionate plan," whereby, in addition to the value of all instrumentalities exclusively devoted to the electric service, a percentage of the value of other property used jointly by the mill proper—buildings, boilers, power-plant, etc., is allocated to the utility on what it is contended is a reasonable basis. On such valuation the utility asks for a net return of eight (8) per cent per annum.

During the calendar year 1920, utility's exhibit No. 1 shows the total production (not metered) as 590,000 K. W. H., distributed as follows: (estimated on basis of connected load), commercial users 400,000 K. W. H. consumed on utility's premises 190,000 K. W. H. From this it will be noted that the utility is presumed to have appropriated to its own use 32 per cent of the entire product. As heretofore stated, master meters were not installed until about January 1, 1921, hence the *estimated* production, distribution, and consumption for the year 1920. For the months of January, February and March, 1921, however, the figures shown in the same exhibit may consistently be taken as being substantially correct, and are as follows:

Commercial uses	168,600
Utility uses	41,000
Total production	209,600

figuring, as will be observed, that the utility consumed only 20 per cent of the output during these three months.

In arriving at the return upon its investment, the utility has, for the year 1920, and likewise for the first quarter of 1921, charged to its own account, an amount representing only the actual cost of production of that portion of the total product consumed by it. In other words, there has not been taken into consideration any **return** on the value of the plant and other property, which alike, and contemporaneously, are serving the commercial industry and the utility itself. It, therefore, follows that if the

desired return of 8 per cent were realized, the **entire amount** must come from profits on **commercial** sales, which in 1920 are estimated to be 68 per cent of the whole, and if a rate schedule were established that would produce a net return of 8 per cent on the investment, it is apparent that the commercial scale must be **in excess of an 8 per cent return basis**. Of course the energy used by the utility and the current consumed by the lumber corporation proprietor must be paid for at tariff rates. It follows that the practice the company has heretofore pursued is unlawful.

Flat Rates—Wasteful.

"Estimates" (flat rates) inevitably create discrimination as between consumers of the same class. (In re **Gardiner Elec. Light and Water Company**, 13 M. U. R. 279, P. U. R. 1920-D, 821). Gross waste and extravagant use of energy follow this practice. If patrons were restrained by meter measurement, reasonable economy would most likely result in a demand not in excess of the utility's capacity to furnish, and at less expense. The record does not show that this utility is now unable to supply the demand made upon it; there is no testimony to indicate that the service is or has been deficient in any way, and so far as we know there has been no complaint. The record **does** show, however, that it has been necessary to enlarge the capacity of the production plant **three different times** in order to meet the requirements; the present generating equipment having been installed in 1920. Is it not reasonable to presume that at least in some degree these expansions were the result of wasteful uses and indifference, and not entirely due to the growth of the city? While the record does not make any mention of it, it was personally observed by the Commissioners that part of the municipal street lights were burning all day. There is no more reason why electricity should be sold in **unknown quantities** than there is for selling coal "so much a load". A unit of measurement must be established.

Free Service.

Free service to anyone is so obviously an unjust discrimination that we deem it unnecessary to here cite previous rulings on that question. If the utility is entitled to show a fair return upon its capital invested, and as to this there can be no argument provided it is established that the business is being properly conducted, the **entire output of the plant must be accounted for**, at a reasonable rate for the class of service rendered. If this is **not** done, the debit thus incurred must be borne by other patrons in the way

of excessive rates; otherwise the utility will continue to show sparse earnings, or possibly a deficit. **There must be no free service.**

Rendering Bills.

The present practice of the utility of adding together the readings of two or more meters in the service of one consumer, and on the accumulated total applying the rate for that consumption, (a lower block), is in violation of Standard Rules and Regulations adopted by the Commission, to-wit:

Rule 11. "For the purpose of determining the amount of service used, a meter shall be installed by the company upon the consumer's premises, at a point most convenient for the company's service upon the reading of which meter all bills shall be calculated. If more than one meter is installed, except where service conditions on a consumer's single premises make the installation of more than one meter necessary, each meter shall be considered by itself in calculating the amount of the bill. When more than one meter is installed under the exception to this rule, the sums of the consumptions and demands shall, in all cases, be taken as the total consumption and demand."

Deposits.

It has been the practice of the utility in the past, and is now, to require a deposit of \$5.00 from residences and \$25.00 from business houses, as a guarantee for the payment of monthly bills; this, regardless of the amount of energy consumed, or whether on meters or flat rates. The utility requests a uniform ruling to cover all patrons, without discrimination. It will not be necessary that an order be made to cover this point, inasmuch as the Commission's Standard Rules and Regulations provide:

Rule 5. "The company shall have the right to require the deposit of a sum equal to one and one-half times the average monthly bill, as a guarantee for the payment of accounts."

(The record shows that this utility pays interest at the rate of 6 per cent per annum on all deposits).

Steam Heat.

In addition to furnishing electricity, this investigation has developed that in a very small way the utility is furnishing steam heat, the by-product from its power plant, to other buildings than its own. While that service is not

contemplated in the notice of hearing in this proceeding, the cost to supply as well as the revenue derived therefrom should be taken into consideration in the analysis of receipts and disbursements applicable to the electric department, as long as this business is trifling.

Fuel.

Owing to the intermittent operations of the lumbering industry for the past year, due to the market and other general depressing conditions, which are familiar to all, it has been necessary at times, in fact, frequently, as the record shows, to operate the power plant of the planing mill exclusively for the production of electricity. This brings up the question of allocating the cost of fuel as between the mill and the electric service. Ordinarily the planing mill produces enough shavings, edgings, etc. to supply the boiler with fuel without resorting to the use of slab wood, the latter being more expensive, and for which there is a ready market. It has been the practice to divide the entire fuel expense between the two industries on a basis of steam generated to which basis we offer no criticism when conditions are normal, but, as we understand it, were it not for the mandate of furnishing light and power to commercial users, there would not be at any time any wood burned under these boilers. Consequently, if our understanding is correct, there appears to be no valid reason for the lumbering industry being called upon to stand any portion of the expense of slabs used for fuel; that is, the consumption thereof is entirely necessary for the furnishing of electricity, and if so, the whole cost might justifiably be charged to that account. The parent industry, the planing mill, is rightfully entitled to the benefit of the lower cost of shavings and other mill refuse. This paragraph is incorporated in this report as a suggestion to the utility that its present method of distributing the fuel expense may be faulty,—to its own detriment; and if so found, should be corrected in accordance herewith, as it is the object in all such investigations to adjust irregularities whether the adjustment is in favor of, or adverse to, the utility's interests.

Conclusion.

The conditions as we find them, and set forth in the record, make unnecessary a detailed valuation at this time. The utility desires to be fair with its customers and at the same time safeguard its own interests. It asks for suggestions and recommendations from the Commission that will tend to improve and standardize its operations; admitting reluctance in adopting improved methods and lack of conservation of its resources. We are of the opinion

that with all avenues of waste closed, and discrimination removed by actual measurement of usages, the elimination of unnecessary service, and a strict accounting system whereby the utility will benefit by all credits that rightfully should accrue to it, it will be found that the appended schedule of rates will produce a substantial return upon the investment. An order will be entered.

ORDER.

At a session of the Public Service Commission of Montana, held in its office in the Capitol, Helena, Montana, on the 17th day of June, 1921, commencing at 10:00 o'clock A. M., present Chairman Dennis, and Commissioners Boyle and Ross, in the matter of inquiry into the operation and management of, rules and regulations in vogue, also the reasonableness of rates charged by the P. L. Howe Lumber Mills in the City of Eureka for electric service, Docket No. 783, this matter being before the Commission upon the application of the utility for an amended schedule of rates, rules, and regulations, and an investigation of the matters and things involved having been had at public hearing, and independently by the Commission and the Commission having on the date hereof made and filed of record a report containing its findings and conclusions therein, which, said report, is hereby approved and by reference made a part hereof, and now the Commission being well informed in the premises,

IT IS ORDERED That the application of the utility be, and it is hereby granted in modified form, to the extent that the following schedule of rates for electric current, shall be put into force and effect in the City of Eureka, July 1, 1921, and the utility shall, not later than July 10, 1921, file with the Commission its tariffs prepared in accordance herewith.

SCHEDULE A.

Residential and Commercial Lighting: General Lighting.

First 25 KWH used per month.....	14c per KWH
Next 25 KWH used per month.....	13c per KWH
Next 50 KWH used per month.....	11c per KWH
All additional KWH used per month.....	10c per KWH
Minimum Charge per Month, \$1.50. No Discount.	

The company reserves the right not to install a meter where the connected load is less than 120 watts.

SCHEDULE B.

Power Service.

This schedule applies to all commercial and municipal power used continuously throughout the year, where no lighting load is used on the power circuit.

Readiness to serve charge \$1.00 per month per horsepower connected, plus the following rate for energy:

One HP Motors or less.....	.07 per KWH
Over one and not over two HP.....	.05 per KWH
Over two and not over four HP.....	.04 per KWH
Over Four HP	.03 per KWH

On installations totaling 5 HP or less the connected load will be assumed to be the maximum demand.

On installations exceeding 5 HP, the consumer may at his option demand the installation of a curve drawing watt-meter and the charge thereafter shall be based on the actual demand as recorded.

SCHEDULE C.

Heating and Cooking Rate.

This schedule shall apply to all heating, cooking and electric service other than lighting and power.

First 100 KWH used per month.....	.05 per KWH
Next 100 KWH used per month.....	.04 per KWH
All additional KWH used per month.....	.03 per KWH
Minimum charge per service, \$2.00 per month. No discount.	

SCHEDULE D.

Municipal Street Lighting.

For each 100 Watt Lamp or less \$1.80 per month.

In addition the company may charge 20 cents per lamp per month for patrol service and replacement of burned out and broken lamps.

IT IS FURTHER ORDERED That on and after July 1, 1921, each and every service shall be metered (except municipal street lighting, and except as provided in schedule A), and upon such meter readings all bills shall be rendered in accordance with the rates herein provided.

IT IS FURTHER ORDERED That on and after July 1, 1921, the utility shall cease and desist from the past practice of furnishing any electric current to any person or persons whatsoever, free of charge, or for any measure of compensation other than that prescribed in this order.

IT IS FURTHER ORDERED That the utility shall, in computing the return upon its investment, bear in mind and conform to the principles set forth in that portion of the preceding report under caption of "Investment."

IT IS FURTHER ORDERED That the Secretary of the Commission shall serve by mail a certified copy of this Report and Order upon the P. L. Howe Lumber Mills, and said order shall be in full force and effect according to its terms, and shall so remain in force and effect until the further order of the Commission. It should be understood, however, that the rates named herein are of a tentative nature only, for the purpose of determining the results that will emanate therefrom, and are subject to further consideration and investigation after a reasonable experimental period of time has elapsed.

PUBLIC SERVICE COMMISSION v. VALLEY MERCANTILE COMPANY.

(Docket No. 787. Report and Order No. 320.)
(Hearing May 17, 1921. Decided June 28, 1921.)
(P. U. R. 1921—D, 803)

Jurisdiction—Commission's Right to Determine When Company is Public Utility—Judicial Action—Ch. 52, Laws 1913.

1. The question of whether a given business is a public utility within Ch. 52, Laws of 1913, unquestionably invokes judicial action. Section 4, Ch. 52, Laws 1913, prohibits the Commission from exercising judicial power. Held, the Commission has the power to determine, in limine, whether given facts bring its powers into play, notwithstanding that the process involves judicial inquiry in the sense that the determination of jurisdiction involves the exercise of judgment on given facts, otherwise it would be difficult to function at all.

Public Utility—What Constitutes—Ch. 52, Laws 1913.

2. Where a mercantile corporation with specific power in its charter to supply heat to the public, opens a separate account for its steam heat plant, and from time to time has added consumers until now the buildings of twelve or thirteen customers are supplied with heat, such buildings comprising a substantial portion of the business section of a town, and boilers have been added and mains extended to serve such customers, and they are served at uniform rates, it is engaged as a public utility within the provisions of Ch. 52, Laws 1913.

Public Utility—Statutory Definition—Profession of Service—Ch. 52, Laws 1913.

3. Where a statute defined the term 'public utility' as embracing every corporation owning or controlling any plant "for the production, delivery or furnishing for or to other persons, firms, associations or corporations, private or municipal," heat among other products, the phrase 'for or to other persons' is not to be taken too literally, but there must be read therein the requirement of an express or implied profession of public service on the part of the plant owner. It is not the ipse dixit of the statute, or mere neighborly accommodation, but the fact that the plant owner has voluntarily devoted his property to public use which justifies control by the Public Service Commission of Montana.

Public Utility—Abandonment of Service—Consent of Commission.

4. A public utility may not suspend or abandon service at will, with or without notice to the public through the Commission. The question of abandonment or suspension of service must first be submitted to the Commission by due application after generous notice to the public.

Inquiry into the nature of respondent's business in conducting a steam heating service in the City of Hamilton, Montana, and right of the company to abandon such service at will. Steam heating service found to be a public utility, and tariffs ordered filed, and report furnished.

Appearances: R. A. O'Hara for the Valley Mercantile Company; E. G. Toomey, Counsel, J. H. Bonner, Chief Engineer, for the Commission.

Before: Commissioner Ross, at Hamilton.

By the Commission: This is a proceeding commenced upon the initial motion of the Commission under authority of section 24, Chapter 52, Laws 1913, for the purpose of determining whether the Valley Mercantile Company, in the ownership and operation of its steam heating plant in the City of Hamilton, Montana, is a public utility within the meaning of said act. The inquiry was initiated

following the receipt of a request from the company to be relieved of the duty of furnishing the Commission an annual report of its operations for the year 1920, on the ground that its steam heating plant was not a public utility, coupled with the announcement that the company would cease serving its patrons at the close of the 1921 heating season. The company's request followed an informal order by the Commission, under date of February 7, 1921, directing the company to submit such report, and file steam heat tariffs, an order manifestly exhibiting a preliminary judgment by the Commission that the company's steam heating business was in fact public in nature. This view, however, rested on the ex parte information then available, and the order emanated purposely to raise the issue. Having served its purpose, it is not to be taken as indicative of any notion possessed by the Commission which was not susceptible of removal by proper proof, for the decision herein rests alone on the record made at the hearing, whereat the company enjoyed its day in court.

We are confronted at the outset with the proposition of our right to pass upon the question of whether a given business is within our statutory jurisdiction,—of determining a jurisdictional fact, namely, whether the business is of that public character which the statute comprehends. This unquestionably invokes judicial action. We make no pretense to any finality of judgment, on the facts or on the law, much less to any independent power to enforce our conclusions. The question here is whether we have the right, **in limine**, to ascertain the extent of our authority. The statute forbids our conclusions finality (Sec. 4, Sec. 26), and deprives of powers of enforcement save through a court (Sec. 8, Sec. 30, Sec. 31). And by Section 4 of the Public Service Commission Act it is provided that nothing therein "shall be construed as vesting judicial powers on said Commission, or as denying to any person, firm, association, corporation, municipality, county, town or village the right to test in a court of competent jurisdiction, the legality or reasonableness of any fixed order made by the Commission in the exercise of its duties or powers." In our opinion this proviso does nothing more than emphasize the fundamental distinction inhering in the distribution of the governmental powers and functions of the State as expressed in Section 1, Article 4, of the Constitution and does not impair our right to the exercise of the judicial faculty. That section divides the powers of government into distinct departments, the legislative, executive, and judicial, and prohibits each department from exercising any powers properly belonging to either of the others. *O'Neill v. Yellowstone Irr. Dist. et al*, 44 Mont. 492, 504, 121 Pac. 283. As

was pointed out in *State ex rel Schneider v. Cunningham*, 39 Mont. 165, 101 Pac. 962: "The purpose of the provision is to constitute each department an exclusive trustee of the power vested in it, accountable to the people alone for its faithful exercise, so that each may act as a check upon the other, and thus may be prevented the tyranny and oppression which would be the result of a lodgment of all power in the hands of one body." Each department must therefore refrain from asserting a power that does not belong to it, for the assertion of such power is equally a violation of the trust. And it is apparent that one department cannot lawfully delegate any of its powers to another or to any person or body. *O'Neill v. Dist.*, *supra*. In view of the constitutional restraints, this Commission, as a sinew of the legislative arm, would be fully bereft of "judicial powers" without the express limitation of Section 4, Chapter 52. But it is plain from a reading of Article VIII of the Constitution that the judicial power confided to the courts refers to the administration of the law in actions and proceedings in courts of law and equity (Sec. 3, Sec. 11, Art. VIII), as such power was exercised by such courts at the time of the adoption of the Constitution. "To act judicially, and to act judicially in a matter of law or equity,—or, in other words, in actions at law or suits in equity—are not necessarily the same. Every officer or board that is required, in the administration of the law, to determine whether a duty exists, or determine from facts, by the exercise of judgment, a course of action, within legislative restraints or guides, must necessarily act judicially in a sense. The power often partakes so much of the judicial function that it is spoken of as quasi-judicial. Manifestly an officer or board, or other tribunal other than a court, may act judicially in the sense above mentioned and not do anything falling within the meaning of the term 'judicial power as to matters of law and equity'; and so a judicial officer may perform acts officially outside of such matters,—mere ministerial acts." *State ex rel. Ellis v. Thorne*, 112 Wis. 81, 87, 87, N. W. 797, 55 L. R. A. 956.

We think it clear from the foregoing that this Commission has the power to determine, *in limine*, the existence or extent of its jurisdiction or authority, i. e. whether given facts bring its powers into play notwithstanding that the process involves judicial action or inquiry in the sense that the existence or non-existence of our power is found, by the exercise of judgment on given facts. That which is prohibited to us is 'judicial power,' the enforcement of liabilities on present or past facts discovered by judicial inquiry in law or equity, not the preliminary of 'judicial inquiry' which ascertains facts and announces conclusions

administratively but stops short of enforcement. On principle, this much must be conceded if we are to function at all. The Commission is the creature of statute. For its every official act authority must be found in the statute, requiring daily consultation of its terms—daily trial of facts against its mandates. Undoubtedly this partakes of the nature of judicial power (*Merril v. Sherburne*, 1 N. H. 199, 8 Am. Dec. 52) but if, for that reason, it is denied us, we are incompetent. To push the denial of judicial power to its drily logical extreme is for the judicial to destroy the legislative function for most legislative action is preceded by hearing and investigations quasi-judicial. *Prentis v. Atlantic Coast Line Co.* 211 U. S. 210, 29 Sup. Ct. 67, 53 L. Ed. 150. That other statutes, city ordinances and the Constitution itself may be among the facts whereon our judgment must be applied makes no difference in principle. If we could not give the constitution effect because its application or interpretation involved the judicial power, we would have difficulty in honoring the oath of office. Without more, it is enough to observe that the legislative and executive branches daily indulge in judicial action without thought of successful challenge on the ground that the rightful function of the judiciary is being trespassed upon.

There is no substantial contradiction by the company of the following body of facts exposed as a basis for decision. In 1893 or 1894, the Anaconda Copper Mining Company, engaged, among other things, in the conduct of a general mercantile business in Hamilton, Montana, installed a steam heating plant to furnish heat to the building wherein the store was located and to the Ravalli County Bank located in a separate structure then owned by the Anaconda. Heat was also furnished to the Lucas Opera House owned by Marcus Daly, and this latter service was probably in view when the plant was installed. Thereafter, and prior to 1908, two or three or more buildings owned or controlled by other persons were connected to the plant and were furnished regular service. On or about the 15th day of August, 1908, the Valley Mercantile Company was incorporated by Marcus Daly, P. J. Shannon, and W. O. Fisk, under the laws of Montana, with power, *inter alia*, "to manufacture and supply gas, or supply light and heat to the public by any other means," and a few days later the new corporation acquired the mercantile business, buildings, and steam heat plant of the Anaconda company. Thereupon the new company opened a separate account for the steam heat plant (not segregating the investment, however) and from time to time since its acquisition of the plant has added consumers until now twelve or thirteen customers are billed for steam heat. The extent of the present service in fact

more plainly appears when the persons and spaces served under a single billing are brought to light. Billed consumer number one, a real estate brokerage company leasing a building, four or five tenants occupying three or four rooms in addition to the rooms occupied by the company for its own purposes; billed consumer number two, a stock farm corporation charged for the Kendall building, tenanted by a barber shop, a cigar store and a restaurant; billed consumer number three, a national bank owning two buildings, one of which has ten business or office apartments, both buildings containing eight or ten tenants; billed consumer number four, a capitalist, two or more store or business rooms on the ground floor, with office rooms above, with a total of not to exceed five tenants at the present time; billed consumer number five, moving picture house, a single occupancy; billed consumer number six, telephone company with a building housing the exchange and company offices, single occupancy except small space for telegraph office of another corporation; billed consumer number seven, a hospital of not to exceed twenty rooms occupying the second story of a building belonging to the Daly estate; billed consumer number eight, a state bank owning a building occupied by itself, the United States post-office, and six or eight tenants; billed consumer number nine, a physician whose building houses three stores, a drug store, a grocery store, and a book store, with five or six tenants in upstairs apartments; billed consumer number ten, milliner storeroom, single occupancy; billed consumer number eleven, a clothing company, one store room, single occupancy; billed consumer number twelve, the respondent mercantile company, five departments. These billed consumers have been served for periods varying from twenty years or more to two years or somewhat less, but so far as the buildings go, most of them have been connected and served for ten years or more, through various changes in ownership. For the year ended January 31, 1921 (the ordinary heating season is eight months) 11,618 feet of steam radiation were furnished the persons enumerated, approximately 25 per cent of the radiation being taken by respondent. Since 1918, when the present manager's knowledge of the plant commences, one request for renewal of discontinued service was refused, because it was felt that the connection would impair the existing service, one patron voluntarily discontinued service to space used as a public garage, while the Masonic Temple was connected for a single season and thereafter discontinued because its distance from the plant precluded satisfactory service. The plant's boilers, three in number, of from 25 to 27 horse-power have a normal capacity of about eight thousand feet of radiation, and

are, consequently carrying an overload; the plant is now serving to capacity. It seems that two boilers would easily suffice for the respondent's own needs, allowing an average of one hundred feet of radiation for one horse-power, and it is a fair inference from the testimony, though not uncontested, that the third boiler and enlarged mains were installed to meet the necessities and convenience of others than the respondent company. The most substantial and important portion of the town's business district is served by the plant in question, though not the greater part of the area of such district and the company installed and owns all the mains whereby it carries its product to the consumer. No franchise or any other right was ever secured from the municipal corporation of Hamilton to lay pipes in the streets and alleys of the city, though one street and one alley contain steam mains. It is not clear from the record whether municipal incorporation was an accomplished fact before the mains were laid. Rates to consumers have been uniform, save that the company has at various times enjoyed a somewhat lower rate. And it does not appear that private arrangements or agreements were entered into as consumers were attached, public service then disclaimed, or particular persons or corporations selected to be served. Competitors of the company's mercantile business have not been excluded.

For the respondent it is insisted that the Anaconda company "drifted into the habit of supplying some of the neighboring stores and business blocks with steam heat, not as a money-making proposition but simply as an accommodation," and that when the respondent company purchased the former's mercantile interests, it continued to supply heat to some of its customers and neighbors. It is said that the company has never held itself out as looking for heating business, or solicited the same, that it can not serve any additional consumers with the present equipment, and has no disposition to make further investment in such a plant, though it has "offered to join in" with the construction of a central heating plant for Hamilton. The capital invested in the heating plant is said to be about one-eightieth of the capital invested in the mercantile business, and this assertion is offered to show the incidental and auxiliary nature of the steam heating undertaking.

Section 3 of the Public Service Commission Act defines the term 'public utility' within the meaning of the act to "embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment or any part of a plant or equipment

within the State for the production, delivery or furnishing for or to other persons, firms, associations or corporations, private or municipal, heat * * whether within the limits of municipalities, towns, and villages, or elsewhere; * * *". This definition, not elsewhere limited by the language of the act, taken literally might put a legal end to the company's remonstrance for, by admitted facts it is a corporation owning and operating a plant equipped to furnish, and furnishing, heat to other persons and corporations, perhaps not operated primarily for such purpose, but in practice so conducted as to deliver and furnish to others, and the "other persons" here are at least twelve in number. And this would seem at first blush to meet the statute's test. But it is plain to anyone familiar with public utility law that not every person who owns a plant equipped for the production of steam heat and who furnishes one or two other persons with the product can lawfully be said to operate a public utility. For example, A, owning a plant in his residence normally generating a surplus of steam, connects his brother B's residence in the next lot and C's private garage to the rear of his home, with a view to economical utilization of the product. Or D, having the means, installs a larger plant than necessary in his home or business block at the request of neighbors E and F, whose buildings are so located with relation to D's as to make a single plant feasible, E and F not being able to undertake the project individually, agreeing to pay their proportion of connected radiation. No one would seriously assert, we think, that A or D were subject to regulation as operating public utilities, and yet Section 3, of our statute, taken by itself, might include such operations. If the word "for" appearing after "State" and again, after "furnishing" implies the notion that the plant is operated with the intent or purpose of furnishing others, that is, serving others is the reason for owning and operating, the act itself sufficiently excludes such examples as above suggested. However this may be, resort to the fundamental principle underlying the statute and necessarily influencing it, makes it clear that the right of regulation depends on a profession of public service, and unless this appears in fact the statute is without any application. *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77. Wyman has made this clear in his work on public service corporations:

"It should be remembered, in justification of the imposition of the extraordinary law which requires those who are engaged in public callings to serve all that apply, that the service is voluntarily assumed. Every one who has acquired a virtual monopoly is not forced into public service against

his will; it is only when he has held himself out in some way as ready to serve that he is bound thereafter to deal with all indiscriminately. There is no complete case of public employment made out when the business is public in character if there has been in the particular case no profession to serve the public. The converse of this is also true, that there is no case of public employment if the business is private in character, however much eagerness to deal with the public may have been evinced. That is, the rule is fundamental that in any case of public employment the evidence of profession to serve the public and the proof that the business is public in character must both be sufficient to carry conviction. For whether there has been profession enough in the particular instance and whether the business is sufficiently public in its general character is in each instance in last analysis a question of fact, although rules of law may aid in dealing with these facts. And since this is a question of fact rather than a question of law in most cases, the discussion of it requires the statement of many cases involving many close issues of fact. For although the public profession is often enough made in express terms, it is also not infrequently left to implication from the general course of the business in question."

Wyman on Public Service Corporation Vol. 1, Sec. 200, pages 167, 168.

And in dealing with a statutory definition which, like our own, is not wholly free from ambiguity, the supreme court of Missouri emphasized the necessity for reading in the words "for public use."

"While the definitions quoted, *supra*, express therein no word of public use, or necessity that the sale of the electricity be to the public, it is apparent that the words 'for public use' are to be understood and to be read therein. *State ex rel. Public Service Commission v. Spokane & I. E. R. Co.*, 89 Wash. 599, L. R. A. 1918-C 675, P. U. R. 1916-D 469, 154 Pac. 1110. For the operation of the electric plant must of necessity be for a public use, and therefore be coupled with public interest; otherwise the Commission can have no authority whatever over it. The electric plant must, in short, be devoted to a public use before it is subject to public regulation. *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77. Since the sole right of regulation de-

pend upon the public interest, the subdivisions quoted above, and which define an electric plant and an electric corporation, mean the same, whether the idea of a public use is expressly written therein or not; it is nevertheless of necessity connoted and to be understood therein * * * *

It is certainly fundamental that the business done by respondent either constitutes him a 'public utility,' or it does not." And further:

"* * * state regulation of private property can be had only pursuant to the police power, which power is bottomed on and wholly dependent upon the devotion of private property to a public use. If the requirement that the private property shall be devoted to a public use, before it can be regulated, and before inquisitorial authority be exercised over it, is not to be read into the applicatory law, then that law is obviously unconstitutional, because it takes private property for public use without compensation".

State ex rel. Danciger Co. v. Public Service Commission of Missouri, 205 S. W. 36, P. U. R. 1919-A 353.

And from the supreme court of California:

"It is not the *ipse dixit* of the law, but the fact that petitioner has voluntarily devoted its property to a public use, which justifies the control assumed by the Railroad Commission."

Producers' Transp. Co. v. Railroad Commission, 169 Pac. 59, P. U. R. 1918-B 518, and see 6 Adv. Ops. S. C. (Feb. 1920) p. 166 at 167 where the decision is affirmed and the identical doctrine enunciated.

The same court has recently stated the applicable test in these words:

"The test to be applied is whether or not the petitioner held himself out, expressly or impliedly, as engaged in the business of supplying water to the public as a class, not necessarily to all of the public, but to any limited portion of it, such portion, for example, as could be served by his system, as contradistinguished from his holding himself out as serving or ready to serve only particular individuals, either as a matter of accommodation or for other reasons peculiar and particular to them." **Van Hooser v. Railroad Commission, 194 Pac. 1003, P. U. R. 1921-C, 447, citing Thayer v. California Development Co. 164 Cal. 117, 128 Pac. 21;**

Pinney & Boyle v. Los Angeles Gas & E. Corp. 168 Cal. 12, 141 Pac. 620, L. R. A. 1915-C, 282, Ann. Cas. 1915-D, 471; Associated Pipe Line Co. v. Railroad Commission, 176 Cal. 518, P. U. R. 1918-B, 633, 169 Pac. 62, L. R. A. 1918-C, 849; Allen v. Railroad Commission, 179 Cal. 68, P. U. R. 1919-A, 398, 175 Pac. 466, 8 A. L. R. 249.

There is in this case no outstanding explicit profession of public service; the profession must, therefore, in order to hold respondent, be deduced implicitly from the record, and we think it clear that it so appears, with the consequence that the plant of respondent is a public utility subject to our regulation. In all cases like the present, actions speak louder than words. The express disclaimer of public service made by the company's officers when the legal consequence of their conduct is drawn in question is not entitled to great weight after twelve or more years of serving a substantial portion of the public. Elliot, J., in Indianapolis v. Kingsbury, 101 Ind. 201, 203, expressed the principle applicable to explicit intentions under circumstances calling for the consideration of the same rule of law, in this language:

"We fully agree with counsel for the appellees that an essential element of dedication is the intent of the owner to devote his land to a public purpose, and we unhesitatingly affirm that without such an intention it is impossible that there should be a valid dedication. But the intention to which courts give heed is not an intention hidden in the mind of the landowner, but an intention manifested by his acts. It is the intention which finds expression in conduct, and not that which is secreted in the heart of the owner, that the law regards. Acts indicate the intention, and upon the intention clearly expressed by open acts and visible conduct the public and individual citizens may act. Nor is it to mere secret agreements or arrangements unknown to public officers and to purchasers of lots that courts are to look. What they do look to, and what good conscience and fair dealing require they should regard, is the conduct of the landowner that is open to the scrutiny and knowledge of the community and its members".

The fact that the present company's charter gives it the right to engage in the public heating business, is, of itself, of no importance. Terminal Taxicab Co. v. Kutz 241 U. S. 252, 60 L. ed. 984, P. U. R. 1916-D, 972, 36 Sup.

Ct. Rep. 583, Ann. Cas. 1916-D, 765. But when it is remembered that here the incorporators of the Valley Mercantile Company found the heating plant in operation serving several persons other than its owner, drafted their charter with the avowed purpose of taking over the Anaconda Company's store and, as respondent's counsel says, "in preparing the articles of incorporation they included the operation of that plant" not as a private matter, but, as the articles assert, "to supply * * * heat to the public," a forceful circumstance is furnished to show recognition by the incorporators that the heating business they were about to acquire, and which they did acquire within a few days thereafter, was public in character. In other words, they discovered, rather than created, a situation, and applying their judgment to it determined that therein a public service was involved and drafted their charter "to spread out over it". Following this judgment the respondent company attached customers on request (ability of the customer to pay being the only test, it seems, in deciding who should be served) not only to the capacity of the plant, but enlarged the plant capacity at least thirty-three and one-third percentum to meet additional demand from others until today twelve or thirteen of the principal persons or firms engaged in business in Hamilton are billed for service and through them approximately one hundred and fifty persons (varying) or more are now dependent on respondent's continued function for steam heat. These patrons did not have to connect at their expense; the product was carried to their premises at the company's expense on the patron's solicitation, and nothing appears to exhibit any heat patron as sustaining some peculiar relation to the company. The record nowhere exhibits an intent to shrink from public service as long as there was reasonable ability to serve all connected satisfactorily. There is a physical service limit to all public utility plants. With some it may be six or seven service connections, with others a hundred thousand; it is enough if such portion of the public is served as can physically be served by the system involved (Wyman, Vol. 1, pp. 239, et seq), and this is the case here. The circumstance of setting up a separate and independent account for the steam heating plant and of establishing a uniform rate basis all accords with the theory that the respondent company itself regarded its heating function as public in character. The fact that the company has operated for eight years without filing its rates and regulations with the Commission does not alter its status; the sovereign's rights do not rest on voluntary recognition.

Without further demonstration we think it sufficiently appears from the whole record that the evidence fully sup-

ports our conclusion. There are adjudged cases, on facts more or less similar, reaching contrary conclusions, but we think them distinguishable, not by labored dissection, but on the outstanding facts. Most of them are collected in *State ex rel. Danciger v. Public Service Commission*, *supra*. Of these, *Cawker v. Meyer*, 147 Wis. 320, 133 N. W. 157, 37 L. R. A. (N. S.) 510, most nearly meets the instant situation. The supreme court of Wisconsin there held that one who built a plant for furnishing the tenants of his own building with heat, light and power, and sold the surplus of such products generated by the plant to three neighbors was not operating a public utility within the meaning of the Wisconsin statutes on the subject, statutes not unlike our own. Mr. Justice Vinje, in delivering the court's opinion, however, said:

"In the instant case, the purpose of the plant was to serve the tenants of the owners, a restricted class, standing in a certain contract relation with them, and not the public. The furnishing of power, light, and heat to a few neighbors was incidental merely, and limited to them. Should plaintiffs, however, enlarge their field of service, it is by no means certain that they would remain exempt from the operation of the law * * *".

In *Wingrove v. Public Service Commission*, 81 S. E. 734, the supreme court of appeals of West Virginia held that a corporation organized under a charter authorizing only mining and sale of coal and the exercise of rights incidental to such business, but nevertheless engaged in the work of supplying electric energy from an electrical plant installed and maintained primarily for the operation of its mining facilities, to persons, stores, and offices, in a town, was a public service corporation. In the course of its opinion the court says:

"The service is voluntary, but such is the character of all other public service. No exception can stand on that ground. The company does other business, and its public service is incidental, auxilliary, secondary, or appendant. So is the lighting business of many others. For instance, a municipal corporation is created primarily for governmental purposes, but elects to furnish citizens water, electricity, and gas, not a strictly governmental function at all, and purely voluntary. So a private water and light company may deal in coal and ice, and the coal and ice business may predominate in volume; still the company would undoubtedly be engaged in the service of the general public".

"Its lack of the power to eminent domain is a mere inconclusive circumstance. Many persons and firms engaged in the public service do not have it. If concerns engaged exclusively in water, light, and gas service did not possess it, they would clearly be public service concerns nevertheless. Many common carriers are without power to exercise this high right. Acceptance of practically all applications for service, made by citizens of the town, is a sufficient election to engage in the business and manifestation thereof, without advertisement of the fact or solicitation of customers. Acquisition and retention of its patronage by the company constitute an occupation of a certain field in the public service, into which no other concern or person can safely enter. While it has not formally or in terms kept any one else out, others may be barred out, by such occupancy. Nor can it be material that the company reserves the right to discontinue the service at any time, or has guarded against obligation on its part to continue it definitely or at all. It is now devoting its property in part to a public function, and, in so doing, has subjected it to governmental regulation and control for the time being".

The same court, in *Chambers v. Spruce Lighting Co.* 95 S. E. 192, applied the doctrine just enunciated to a coal mining company which operated an electric plant for furnishing energy to its lessees and incidentally sold surplus energy to a hotel and others, refusing to sanction the company's attempt to discontinue service at will. And see the same principle applied by the Supreme Court of Colorado in *Seaton. etc. Co. v. Idaho Springs Investment Co.*, 49 Colo. 122, 111 Pac. 834.

At the hearing respondent's counsel advised the Commission that the company had reconsidered its announced intention of discontinuing heating service at the close of the 1920-1921 heating season, and would not discontinue such service until "the end of the heat year 1921-1922" because cessation now "might work a hardship on some of the people that are getting heat". Of course this involves the assumption that the plant is not a public utility, or if it is, that it may nevertheless quit public service without consent of the State through this Commission. Counsel asserts both propositions are sound, the former rather reluctantly, for he says "the probabilities are" that the plant is a public utility. Deciding as we do, however, that the plant is a public utility subject to our jurisdiction, it is by no means clear that it may cease to serve at will, with or with-

out notice to the public. For its part the Commission has already taken the view that such corporations can not suspend service at pleasure (In re Butte Electric Railway, 13 M. U. R. 288, P. U. R., 1920-E, 760) the merits of their proposal being a matter for our concern; and the view is that this duty is a natural incident of public service. If the company still desires to abandon public service it should file an application therefore with this Commission, and after public hearing we will pass thereon. In the meantime we express no opinion on the question of whether or not the company should be permitted to stop its pulic service, contenting ourselves with the determination that it is a public service corporation in the operation of its steam heat plant, subject, in consequence to all the public obligations of such corporations, among others the filing of tariffs and reports here. An appropriate order will be entered.

ORDER.

At a session of the Public Service Comission of Montana, held in its office in the Capitol, at Helena, Montana, on the 28th day of June 1921, commencing at 2:30 o'clock P. M., present, Chairman Dennis and Commissioners Boyle and Ross, in re the status and character of the Valley Mercantile Company, a Montana corporation, owning and operating a steam heating plant in the City of Hamilton, Montana, Docket No. 787, this matter being before the Public Service Commission upon its own initial motion, and a full investigation of the matters and things involved having been had, including public hearing under the above docket number, and the Commission having on the date hereof made and filed of record a report containing its findings and conclusions therein, which said report is hereby approved and made a part hereof, and now the Commission being fully advised in the premises:

IT IS THEREFORE ORDERED That the Valley Mercantile Company shall, on or before the first day of August, 1921, file with the Commission in duplicate, tariffs showing its rates and charges for steam heating service in the City of Hamilton, Montana, and all rules and regulations promulgated by said company, for said service.

IT IS FURTHER ORDERED That the Valley Mercantile Company shall, on or before the first day of August, 1921, furnish to, and file with, this Commission on the prescribed form an annual report showing its operations for the year ended December 31, 1920, said report to be executed in accord with Chapter 52, Laws 1913, and Chapter 186 Laws 1919, and the Rules and Regulations of this Commission on the subject.

IT IS FURTHER ORDERED That in the event the Valley Mercantile Company shall desire to abandon its steam heating service in the City of Hamilton, Montana, so far as the same affects persons or corporations other than the Valley Mercantile Company itself, said company shall file with this Commission, an application to abandon its steam heat service as aforesaid.

IT IS FURTHER ORDERED That the Secretary shall serve by mail, a certified copy of this Report and Order, upon each of the parties hereto, and that same shall be in full force and effect forthwith.

IN RE CITY OF LAUREL WATER WORKS.

(Docket No. 789. Report and Order No. 321.)
 (Hearing June 1, 1921. Decided July 18, 1921.)
 (P. U. R. 1921-D, 817.)

Water Rates—Municipal Plant—Consumers Beyond City Limits—Voluntary Service.

1. A municipal corporation which is the proprietor of a public water utility can not be compelled to serve persons residing beyond the corporate limits and who are not subject to the municipality's taxing powers, but if such corporation voluntarily furnishes such persons with water and permits them to connect with the city's mains it must treat the extra-territorial consumer without discrimination. Because the city can not be compelled to serve it does not follow that it may do as it pleases when it does serve.

Water Rates—Water Taxes—Consumer—Taxpayer.

2. The legislature has prescribed that city taxpayers must pay for the purchase, construction, or securing of a municipal water plant, and the recurrent interest charges on funds borrowed for such purposes, their return coming by way of property improvement and social welfare. Taxpayers may not be water users, and at any rate the consumer's obligation is to pay for the use of water through water rates, and in the case of a municipal plant, water rates should be constructed to meet necessary operating expenses plus depreciation.

Water Rates—Extra-Territorial Consumers—Consumer's Construction Offset.

3. The fact that water users residing outside the city limits constructed connections and extended mains from the city system at their own expense and for their own use can not be said to offset, equitably, taxes paid by an improvement district taxpayer within the city limits, because it does not detract in the least from the city taxpayer's burden.

Water Rates—Taxes—Differential.

4. In this case the water rates, per se, to consumers within and without the city are equal and uniform for the same service. The Commission ordered the consumers beyond the city limits to pay, in addition to the water rates, a differential of \$1.50 per month in order that such consumers may properly share in the taxpayer's burden resulting from construction and installation of the system.

Inquiry upon the application of the City of Laurel, and other persons, into the right of persons residing outside the city limits of the municipal corporation, to receive water service from the municipally owned plant and into the

matter of the proper and reasonable rate for such service. Rates for extra-territorial consumers prescribed on basis of tax differential.

Appearances: Frank Wright, Mayor, T. A. Rigney, City Engineer, E. J. Niedekorn, Water Commissioner, all for the City of Laurel; Ira Sullivan, for various consumers, protesting the present extra-territorial rates; L. A. Nutting, **pro se**; J. H. Bonner, Chief Engineer, E. G. Toomey, Counsel, for the Commission. Before: Commissioners Boyle and Ross, at Laurel.

By the Commission: Without reciting the history of the various acts and circumstances which have contributed to the existing situation in the town of Laurel, and its environs, the following summary of the record will suffice as a basis for decision. About the year 1908 the community became a municipal corporation pursuant to the provisions of sections 3208-3211, Revised Codes, Montana, 1907. In 1910 the municipality issued bonds to the amount of \$28,000.00 "for the purpose of procuring a water supply for said town which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt", and in 1917 the town issued bonds to the amount of \$4,000.00 for the same purpose, the ordinance authorizing this issue being almost identical in terms with the ordinance for the first issue. The record does not show what the value of the taxable property in Laurel aggregated in either 1910 or 1917, but it is clear from the assessment rolls for the years between, no reason for a marked difference in property values appearing, that these water bonds incurred an indebtedness in excess of the three per centum constitutional limit and, in consequence, that the revenues derived from the operation of the water system became pledged to the payment of the bond indebtedness (Sec. 6, Article XIII, Constitution of Montana) and the wording of the ordinance confirms the judgment. We are told that there are other water bond issues, and this seems true for the value of the city's plant approximates \$75,000.00; if true it seems a fair inference that all the water bonds were issued by authority of the excess limit allowance, and the revenues of the system must, accordingly, be devoted to amortizing the debt. However this may be, the ordinances now before us provide "that each year after the issuance of said bonds and until all of said bonds are redeemed, the Town Council of the Town of Laurel shall, at the time of making the annual tax levy for said town, levy a tax of six mills" (two mills on the \$4,000.00 issue of 1917) "on each dollar of the assessed valuation of all taxable property within said town for the purpose of providing a fund for the payment of interest

on said bonds and to provide a sinking fund for the redemption of said bonds". It is clear, therefore, that the owner of taxable property in Laurel, the taxpayer, is the person primarily liable for the indebtedness represented by the bonds, and the obligation is a general one proportioned according to the value of the individual taxpayer's property, not according to its frontage or area. With the funds from the general bond issue, the city constructed its pumping plant on the Yellowstone river, the source of supply, the supply main from the river to the standpipe, the standpipe and 75,000 gallon tank located adjacent to the city limits, and, it seems, installed mains through a number of Main street business blocks. The extension of mains and pipes throughout the city generally has been accomplished by the formation of improvement districts, the property owners affected being charged therewith.

For the period from July 1, 1920, to and including January 31, 1921, the Laurel water system failed to make operating expenses by \$286.30; the first months of 1921 show with one exception net operating revenue, as follows: January, \$199.98; February, \$175.11; March, a loss of \$2.96, and April net revenue of \$134.86. These operations have reduced the deficit for the period from July 1, 1920 to April 30, 1921, to \$18.93. The city is paying hydrant rentals and for sewer flushing. From time to time the city has incorporated contiguous territory within its boundaries, and it is in connection with these additions that the instant problem arises. Along the northern boundary line of the Nutting subdivision (that boundary line likewise marking the city limits), there are several tracts, varying in area from four to seven acres, and resident thereon at various distances from, but all outside, the city limits are five persons who receive water from the municipal plant. These persons, with the consent of the city, have attached their holdings to the city system by connecting their two inch pipes to the former dead ends in the Nutting subdivision, union with the city mains being made inside the city limits, and laying the pipes northward to their holdings. The entire expense of the connections and extensions was borne by the persons connecting on a basis established by themselves, and the work seems to have been accomplished without expert supervision and advice. In the southwestern part of the city is a subdivision known as Yellowstone Subdivision, and by extending the principal main on Yellowstone Avenue, South beyond the city limits, three consumers whose tracts are outside the limits receive water from the city; these persons, too, carried the entire expense of the necessary connections and extensions to meet their needs. Possibly there is one residence on ground north of the tank, and outside

the city, which is served by the municipal plant, but of this the record is not certain.

It does not appear that it is more difficult to serve the people outside than inside the city, or that the uses of outside consumers differ materially from the uses which intraurban consumers enjoy, except that the area of the tracts beyond the city affords rather extensive gardens and some pasturage for horses and cows. Within the city the flat rate is \$1.60 per month, and this figure is also the minimum for metered sales. Consumers living outside the city are being charged the intra-city flat rate of \$1.60, plus differential of \$2.00 per month, which the city, after investigation, deems necessary to place the outside consumer of the same basis as the intra-city consumer and taxpayer. It is of this differential that protest is made.

(1) This is the first time that this question has been directly presented to the Commission, and, after careful search of the books, we have not found the precise point touched upon by the supreme court of our state. There are very few analogous cases in other jurisdictions; all of these things have caused us to examine the matter with deliberate care. Since the decision in *Public Service Com. v. City of Helena*, 52 Mont. 527, 159 Pac. 24 there has not been, nor can there be under our Constitution, any question as to the jurisdiction of this Commission, pursuant to section 3, of Chapter 52, Laws 1913, over public utilities owned and operated by municipal corporations. A contention advanced by the city, however, makes inquiry into the extent of that jurisdiction necessary to a complete disposition of the case. It is urged that the city has no authority to extend the service of its water system to persons beyond its boundaries, that neither this tribunal or persons residing without the corporate limits can compel such extraordinary service on any terms, and in consequence that if it does furnish water to outsiders it does so as a matter of grace, and must be allowed to charge what it will. This is another way of saying that because service can not be compelled as a matter of right, it can not be regulated. But the Supreme Court of the United States put an end to such a notion in *German Alliance Ins. Co. v. Kansas*, 233 U. S. 389, where the court said the contention had "no basis in principle," and approved public regulation of insurance rates notwithstanding that the insurance company might pick and choose whom it would serve.

"We do not question the proposition that the city can not be compelled to burden its public water utility by serving those persons who abut the city limits but are beyond the reach of the municipality's taxing powers. Every public utility, whether owned and operated by a private corpor-

ation, or by a public corporation like the city of Laurel, professes public service within limits. By entering upon one service, the corporation does not (assuming its character permitted) thereby undertake any kind of service that may be asked of it, nor, indeed, to serve every demandant of the particular service. (Wyman, Vol. I, Ch. VIII). Natural supply and physical powers may limit in one case, or legal capacity—charters or franchises—in another. Territorial extent of profession is everywhere found, and what more natural or proper, in the case of municipalities than that the extent of service professed shall coincide with the boundaries of the municipality? In this jurisdiction no other view is possible. "A city of this state is a creature of statute. Independently of legislation it cannot exist—cannot exercise any functions whatever. In the absence of constitutional limitations, the legislature would be free to prescribe for a city such powers and privileges as it deemed best." *McClintock v. Great Falls*, 53 Mont. 221, 163 Pac. 99. And see the Montana cases collected in 13 M. U. R. at pages 296 and 297. When we go to the statute, then, to ascertain the city's rights and powers in the premises at the time of its various acts, we find that by subdivision 64 of Section 3259, R. C. 1907, the city was given the right by the legislature to contract an indebtedness on **behalf of the city or town** upon the credit thereof by borrowing money or issuing bonds for the construction of "waterworks * * * **supplying the city or town** with water by contract * * * the construction or purchase of canals or ditches and water rights for **supplying the city or town** with water" with the proviso that no money must be borrowed on bonds issued for the construction, purchase or securing of a water plant, water system or water supply unless a majority of the taxpayers' vote in favor thereof, and further, that the city or town may exceed the three per centum indebtedness limit "to procure a water supply for **the said city or town** which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt." And by section 3454 R. C. 1907, providing for the vote on the question of obligating the city for the construction, purchase or securing of a water plant, water system or water supply, it is emphasized that "taxpayers only" shall vote on such question. Other applicable statutory sections might be cited such as subd. 79 of Sec. 3259, R. C. 1907, an enumeration of the council's legislative powers, "to adopt, enter into, and carry out means for securing a supply of water for **the use of a city or town or its inhabitants**," but we think it sufficiently appears from the foregoing that the municipal corporation is expressly limited to serving "the city or town," and consequently that persons beyond

the boundaries thereof have no lawful right to service. There are to be found certain instances where a city is expressly endowed with jurisdiction beyond its limits, for example, "to license, tax and regulate circuses and shows," three miles beyond the limits (subd. 16, Sec. 3259, R. C. 1907); "to regulate gambling houses," etc., three miles beyond the limits (subd. 19); to prevent disturbances of the peace offenses against public morals, etc., three miles beyond the limits (subd. 25); to police "along the line of water supply to the city or town" (subd. 58); and a city is given jurisdiction by subdivision 64 "over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works and also over the source or stream from which water is taken for the enforcement of its sanitary ordinances, the abatement of nuisances, and the general preservation of the purity of its water supply." The enumeration of these specific exceptions, however, strengthens the deduction that the legislature has not endowed cities with the right to furnish water beyond their limits, or it would have mentioned the right among the extra-jurisdictional powers expressly given cities. McQuillen in his work on Municipal Corporations states the rule thus: "Generally, it is held that a municipality which owns its water or light plant has no implied authority to furnish water or light beyond its territorial limits". Vol. IV, Sec. 1800, pp. 3854-3860, and cases there cited. See also *Kearny v. Bayonne*, 107 Atl. 169, 171. The reason of course, is clear. To execute any power of city government presupposes the power to levy and collect taxes from its inhabitants and property within its jurisdiction to defray the expenses incurred in its execution. Since the city of Laurel may tax only the property within its limits, if it were allowed to extend its water service beyond those limits as a municipal undertaking, the intra-city taxpayer would be carrying the burden not only for the city but for the outsider. *Dyer v. Newport*, 123 Ky. 203, 94 S. W. 25. We have gone into this matter at some length because we think it should be clear that the city's water plant, must, by the laws of our state and on sound principle be held to be dedicated to city service only, and no decision of the Commission's should lend color to a contrary notion, or encourage acts ultra vires.

Notwithstanding this territorial limit of service, the fact remains in this case that the city has permitted persons residing beyond its boundaries to connect their premises to the city water system and is voluntarily furnishing such persons with water. Having voluntarily assumed this extra-territorial service, when it might have refrained altogether, places the city's plant we think, in much the same

position as a privately owned public utility and requires non-discriminatory treatment of all persons served. As noted above, the notion that because a corporation, public or private, can not be compelled to serve, or has no power under its charter to serve, it may do as it pleases when it does serve is without reason, and ignores the whole principle upon which public regulation rests—voluntary service. If the notion were admitted it would allow a company or municipal corporation to take advantage of its own wrong, i. e. while it had no power under its charter or articles of incorporation to do a certain act, yet when the act was accomplished, and the charter thereby violated, the corporation would not be liable for its consequences since it could say it had no power to act. Such a result could not be tolerated. In *Milligan v. Miles City*, 51 Mont. 374, 153 Pac. 276, Mr. Chief Justice Brantly in characterizing a municipally owned public utility, **operating wholly within city limits**, said: "When a city is engaged in operating a municipal plant under an authority granted by the general law, it acts in a proprietary or business capacity. In this behalf it stands upon the same footing as a private individual or a business corporation similarly situated." Under the circumstances of voluntary extra-territorial service here appearing we think the principle just mentioned controlling, with the consequence that the consumer within and without the city must be treated alike. No one would suggest that the rates to the consumer who lives beyond the city limits should be lower than the rates to intra-city consumers nor that consumers be looked at alone, and without reference to the taxpayer at all, for this would work a dedication of A's money to B's burden, a palpable discrimination. The abuses of such a rate structure are so easily imagined that they need not be detailed here.

The legislature had not prescribed the method for constructing rates of city owned public utilities before the advent of the Commission, and since that time has left the subject to the Commission. It has, however, made sure that the taxpayers must pay for the purchase, construction, or securing of a water plant and recurrent interest charges on funds borrowed for the purpose (Sec. 3259, R. C. 1907, subd. 64; Secs. 3454-3464, R. C. 1907) and, it seems, given the city authority "to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement." Obviously the burden of meeting the cost of construction, interest, etc., must, for security of the bondholders, rest on the property owner who is the taxpayer, and it is this condition the statute recognizes. The taxpayer has his return by way of property improvement. Consumers may come and go, may hold property of

taxable value and may not; indeed, there may be no consumers or only a few, and yet the bonds must be met and security by way of taxable property pledged to their redemption. On the other hand as far as the use of water is concerned, many persons who enjoy it are never taxpayers and others are not taxpayers on real property. These persons, however, are the direct beneficiaries of a water system and as such should compensate for their use of the system. They must bear the water rates, as distinguished from the property owner who must bear the water taxes. Where the same person is a member of both classes, he is under both obligations. Our supreme court has declared that the provision whereby the net revenues (Public Service Com. v. City of Helena, 52 Mont. 527, 159 Pac. 24) derived from the operation of a water system constructed from bonds issued beyond the three per cent limit are pledged to extinguish the debt, does not prohibit the municipality from also issuing bonds pledging the full faith and credit of the city to pay for the water system. Carlson v. City of Helena, 39 Mont. 82, 102 Pac. 39. This must be true for, as in this very case, there might not be any net revenues, or sufficient net revenues to meet construction indebtedness. From our investigation of the water rates and financial operations of the Laurel plant we are satisfied that the city authorities have recognized this distinction, and that the existing water rates, as such, are constructed with intent to meet necessary operating expenses including depreciation; the results of the rates have not always met the hopes entertained for them. The cost elements in the water rate are, then, separate and distinct from the cost elements in the water taxes. Since the city has no general taxing power beyond its limits, however, the charge to consumers there residing is a rate and not a tax. It has been suggested, however, that the power to levy a tax "on all consumers" implies actual power to tax beyond the city limits.

The water rates to consumers within or without the city are, in this case, equal and uniform for the same service, and hence apart from the question of reasonableness are not open to attack, and we do not understand that, taken by themselves, they are the subject of objection. In order, however, that the consumers living beyond the city limits may properly share in the taxpayers' burden, resulting from the construction and installation of the system, it is necessary to fix a differential which shall equalize the disparity between rates and taxes. The city authorities, after carefully inquiry, the results of which have been submitted to us, have fixed this differential at \$2.00 per month, it being estimated that the average taxpayer (taxpayer and consumers are generally one and the same person in Laurel)

contributes \$24.00 a year by way of all water taxes in Laurel. Protestants say this is "too high" but present nothing by way of proof in support of their remonstrance. They urge that none of the cost of main extensions by way of improvement districts should be assigned them because they paid all the costs of their own connections and extensions, and that they should share only in the cost of the plant apart from distribution mains. We fail to understand in what manner the fact that a water or three water users living outside the city limits constructed connections and extended mains from the city system, at their own expense and for their own use, can be said to offset the taxes paid by the improvement district taxpayer within the city limits. Their action does not add any property value to the improvement district system, does not promote its efficiency, or cut down the taxes the improvement district member must pay. On the contrary, it adds a burden to that system. They can not expect a credit for their costs because they never shared in the improvement district costs, and their action in constructing mains, etc. does not make them participants in the district expenses for their extensions remain in individual or joint private ownership, while the intra-city extensions belong to the district. When the improvement district taxpayer has completed his tax payments he does not own any part of the mains for they become the district's property and subject to the city government's regulation. It is not a case of each person "paying for his own," but, of each taxpayer contributing his pro-rata share of the district's common property. The outsider, however, owns his own system and may do what he will with it at least as long as he does not injure the city's system. To say that he lightens the city taxpayer's load because he pays for his own improvements is to overlook the fact that it was never any part of the taxpayer's duty to regard the outsider at all. There is no distinction between the distribution mains and the supply line and central plant in the matter of costs for the costs are all common costs, shared, of course, by a smaller number of taxpayers in the case of the improvement districts. The central plant and each improvement district system is an entity not capable of segregation into private ownership on the basis of taxes or any other basis. If it be assumed, however, that credit is to be given for the outside private costs, it is not possible here to strike a balance against the average improvement district taxpayer's tribute to social welfare, because the physical property in the water-pipes lying beyond the city limits is not comparable with the system of enlarged mains in the city and the improvement district taxpayers have paid, or

are paying, not only for the mains and pipes directly in front of their premises, but for the mains across public streets and alleys, other public places, and ground owned by the federal government, if any, and for all the engineering, legal and governmental expense incident to the formation of such districts. Further, all the main extensions for many blocks are necessary to enable protestants to connect at the point they did; they might have had to go to the heart of the city. Suppose they had to lay but five or ten feet of pipe at their own expense? Could it be seriously suggested that no account should be taken of the improvement district taxes? Suppose the outside consumer lays his mains for a distance of five miles. Would it then be said that he has wiped out or overcome any obligation to an improvement district containing two miles of mains, when the existence of the mains has saved him from a seven mile undertaking? The outside consumer being a stranger to the city's system, it is hard to see where there is any room to credit his individual undertaking, which he accomplished with his eyes open and certain knowledge that all the burden must be his, against the developed distribution system built to a capacity to serve not two or three, but all proper demandants. Indirectly, but just as certainly, these improvement district taxpayers, as general taxpayers, are paying taxes to the city for water plant costs which are not covered by any water bond issue. Since the plant is a municipal plant, much of the time and effort of governmental officials was given to the realization of the proprietary enterprise, and in equity these are as much costs of construction and acquisition as the money paid out for the standpipe. Finally, it is said that inasmuch as the outside consumer has no fire protection, and such protection is one of the principal reasons for a water system, he is not afforded all of the advantages of the city system. This attitude, we think, well illustrates the danger of encouraging extra-territorial connections. The outside consumer is constantly comparing himself with the intra-city consumer, constantly endeavoring to realize the same advantages, while escaping many of the general obligations of the city taxpayer. It does not appear from the evidence that these very remonstrants are wholly without fire protection as far as water supply is concerned; on the contrary, some protection is shown. And yet, they do not suggest that they are willing to pay any of the cost of the municipality's fire protection service. On the whole record in this particular case we fail to see where it can be said that the outside consumer by voluntarily connecting to or extending water mains, to which he has no legal right of access, at his own cost and expense, can successfully lay

claim to sharing in any part of the city taxpayer's burden at this time. This view is supported by an opinion rendered by Attorney General Poindexter, now United States Judge for the Territory of Hawaii, and found in 6 Ops. Attys. Gen'l. 457. The Attorney General there held that neither the city council nor this Commission has the power to order the connection of water pipes to a water main constructed by a special improvement district to give service to persons outside of such district, and his conclusion is expressly grounded on the fundamental necessity for preserving to the taxpayers and to them alone, the benefits of that which has been constructed from their funds. On both branches of this case the opinion is worthy of respect, and if the principle applies to improvement districts its force is greater when applied to those who live beyond the city's limits altogether.

Data for accurately determining the precise differential which the outside consumer must bear to be on a par with the city taxpayer are very imperfect. From all the figures available, including the county assessor's valuations for 1921 of the outsiders' taxable lands and improvements connected to the city's system, we think it reasonably clear that the \$2.00 differential now effective exceeds the average monthly contribution of the city taxpayer for all water system costs. Of course, if a strict property valuation basis were followed the differential for each consumer affected would vary in proportion to the value of his taxable property, but as the charge is to be fixed as a rate, uniformity should prevail. We find that \$1.50 per month, or \$18.00 per year per consumer, will, under the present tax levy, be a reasonable differential for the city to impose, and the same is hereby fixed and established until the further order of the Commission. The differential must, of course, respond to the tax levy found necessary from year to year, but no change in the former can be affected until the same has been approved by the Commission after proof of tax modifications. An appropriate order will be entered.

ORDER.

At a session of the Public Service Commission of Montana, held in its office at the Capitol, at Helena, Montana, on Monday, the 18th day of July, 1921, commencing at 10 o'clock A. M., present, Chairman Dennis, and Commissioners Boyle and Ross, in the matter of the application of the City of Laurel, Montana, for an inquiry into the right of persons residing outside the city limits of the municipal corporation to receive water service from the city's plant and system and into the matter of reasonable rates for such service, and the remonstrance against the present rate, by

persons so residing beyond the city limits, Docket No. 789, this matter being before the Public Service Commission upon the application of said city, and the remonstrance of the persons aforesaid, and a full investigation of the matters and things involved having been had, including public hearing under the above docket number, and the Commission having on the date hereof made and filed of record a report containing its findings and conclusions therein, which said report is hereby approved and made a part hereof, and now the Commission being fully advised in the premises:

IT IS THEREFORE ORDERED That the municipal corporation of Laurel, Montana, as the owner and operator of the public water utility therein established, shall, until the further order of this Commission, demand, collect, and receive, from all persons living beyond the city limits of Laurel, Montana, and connected to said water utility, the same rate and charge for water service either on a flat or metered basis, as is demanded and collected from consumers served within the city limits of Laurel, Montana, and, in addition, a differential over and above the regular rate and charge of \$1.50 per month.

IT IS FURTHER ORDERED That the objections of the remonstrants herein be and the same are hereby dismissed.

IT IS FURTHER ORDERED That the Secretary shall serve by mail, a certified copy of this Report and Order upon each of the parties hereto, and that the same shall be in full force and effect forthwith.

IN RE RATES OF BUTTE ELECTRIC RAILWAY COMPANY.

(Docket No. 790. Report and Order No. 322.)
(Hearing July 7, 1921. Decided July 13, 1921.)
(P. U. R. 1921-D, 730)

Street Railway—Rates—Trial—Abnormal Conditions—Reconstruction.

1. While various rate schedules initiated during the past three years have been tested out during periods of industrial depression and community misfortune, Commission is of opinion that trials have nevertheless been fair since conditions of varying stress must be taken as the norm during the reconstruction period and until pre-war conditions return or are definitely rejected for another more or less permanent settlement of the affairs of our national life.

Street Railway—Rates—10 cent Cash and 6¼ cent Ticket Basis.

2. Where five different fare schedules for a street railway utility have been tried out during the past three years in an effort to discover a persuasive and remunerative schedule, none of them proving satisfactory, and there is no sensible device short of a 10 cent cash and 6¼ cent ticket schedule, the latter will be approved.

Street Railway—Rates—Popular Vote—Effect on Commission.

3. A street railway company, pending a rate increase, conducted a vote among its car riders to determine their attitude with reference to the proposed advances, the count showed an overwhelming vote for the increase. Held, a popular expression of sentiment is not binding upon the Commission for the latter can not rely thereon to escape the duty which the statute enjoins upon it, viz; to find reasonable rates. Car riders generally are not informed as to the facts requisite to intelligent decision.

Application by the Butte Electric Railway Company for a revision of its fares for street railway service, from a basis of eight cents cash to a ticket fare of 6 1-4 cents and cash fare of 10 cents. Application granted.

Apperances: Sydney Sanner, Fred J. Furman, Counsel, for the Butte Electric Railway Company; Frank Walker, and others, for the Butte Chamber of Commerce; E. G. Toomey, Counsel, for the Public Service Commission.

Before: Chairman Dennis and Commissioner Ross at Butte.

By the Commission: Prior to December, 1918, the Butte Electric Railway Company operated its street railway service in the City of Butte, Montana, and the environs thereof, on the now historical, but then almost universal American fare of five cents, and such fare had prevailed at least since March 4, 1913, when this Commission assumed jurisdiction over the utility. In August of the former year the company petitioned for a cash fare of ten cents and a ticket fare of six and one-quarter cents. It was awarded a six cent straight cash fare for the reasons set out in Report and Order No. 250, 11 Mont. R. R. & P. S. C. Reports, 203, and the supplement to such report and order, in 12 Mont. R. R. & P. S. C. Reports, 81. The tariff containing the six cent fare remained in effect from January, 1919, to and including July 31, 1919, when it was superseded by a tariff containing a fare basis of seven cents cash and six and one-quarter cent ticket filed and approved on authority of Report and Order No. 270, 12 Mont. R. R. & P. S. C. Reports, 154. The Commission had, preceding the date of the last order, July 21, 1919, concluded a physical valuation of the company's property whereby a rate base of \$1,558,-849.17 was established. The fare structure last mentioned continued operative until June 15, 1920, when, after renewed petitions from the company and additional investigation by this body, a tariff embodying a fare basis of eight cents cash was filed and by us approved. At that time it was the judgment of the Commission in which the company's officials shared that from and after October 15, 1920, ticket fares of seven cents might be inaugurated in connection with the eight cent cash fare and the tariff so provided. After trial from October 15, 1920, to November 15, 1920,

notwithstanding the brevity of the period, it was demonstrated that the spread was too small to provide inducement for increased patronage, that the utility was suffering thereby, and that approach to normalcy was remote, hence the eight cent cash basis was restored pursuant to our direction in a tariff which spoke from November 15, 1920. By express limitation therein expiration was fixed for June 30, 1921, and the instant application for a cash fare of ten cents and ticket fare of six and one-quarter cents comes as a consequence.

Within less than three years then, no fewer than five rate adjustments have been attempted for the Butte Electric Railway Company. The seven-cent cash fare with six and one-quarter ticket device remained in effect almost a year; likewise of the present eight cent cash basis. A year is the period generally accepted for rate trials. "It is by the average of the year that business commonly reckons its losses and gains." *Minneapolis Gas Co. v. Public Service Commission*, 225 N. Y. 89, 98, P. U. R. 1919-C, 364, 369, 121 N. E. 772, 775. *People ex rel Gas Company v. Public Service Commission*, 194 App. Div. 578, 186, N. Y. Supp. 177, P. U. R. 1921-B, 485. Each period of trial was pregnant with community misfortunes; indeed the latter period has witnessed industrial disaster and is the very antithesis of healthy community activity, industrial and social.

From this some may argue that the rates have not had that fair trial which the Supreme Court of the United States commends in *Knoxville v. Knoxville Water Co.*, 212 U. S. 1 and other cases cited in *City of Butte vs. Butte Electric Railway Company*, 14 M. U. R.—, normal operating conditions being essential to the value of any experiment, but we think the better view now and certainly the more sober and conservative consensus is that the reconstruction period is not of temporary and fleeting duration, but of a relatively long time crowded with varying common fortunes. If so, rate trials and experiments must be had under stress, and such condition must be taken as the norm, until prewar conditions return or are definitely rejected for another more or less permanent settlement of the affairs of our national life.

However, this may be, the hard-hitting facts before us compel recognition, and move us to allow the relief asked, for there is no sensible middle ground between the present rate structure and that proposed. These figures which we are satisfied reflect the true conditions obtaining from 1914 to and including June 30, 1921, speak for themselves:

MONTANA UTILITIES REPORTS

Yr. ended June 30	1914	1915	1916	1917	1918	1918—6 Mos. ended Dec. 31	Yr. Ended Dec. 31	1919	1920	1921—6 Mos. ended June 30
Optg. Revenues.....	\$546,213.26	\$456,935.64	\$550,037.29	\$722,356.95	\$700,865.51	\$352,343.70	Accounting period changed by Chapter 186, Laws 1919	\$700,321.28	\$637,776.25	\$267,936.58
Optg. Exps. Includ- ing Depreciation & Taxes	536,711.38	484,088.25	502,639.82	573,572.89	622,101.35	365,651.91		743,126.89	602,426.07	264,691.44
Gross Income or De- ficit	Income 9,501.88	Deficit 27,152.61	Income 47,397.47	Income 148,784.06	Income 78,764.16	Deficit 13,308.21		Deficit 42,805.61	Deficit 35,350.18	Income 3,245.14
Percent Return on \$1,558,000.....	.00609	Loss	.03042	.09549	.05055	Loss		Loss	Loss	.00208
Revenue Passengers Carried	102,170.49	90,575.67	103,798.78	133,257.87	132,078.40	6,460,574		10,805.305	8,667.896	3,396.960

The two war years of 1917 and 1918, averaging a return of 7.25 per cent, exhibit the only reasonably profitable operations in nearly eight years of public service. During those years the copper mines of Butte and allied industries were stimulated to maximum production; the community was crowded with toilers and war prosperity dominated. The figures sufficiently answer the query "why does the company need an increase now if it operated through the war on a five cent fare?" The war brought unusual prosperity to this industrial center in which the utility shared. For the first time since its regulation by this Commission the company enjoyed reasonably compensatory patronage. And the exceptional season serves to emphasize that if the period from 1913 to 1916, for example was "normal", the rate structure then in force was inadequate. The effort is now, as it has been for years past, to discover a remunerative schedule of fares, and this means a persuasive schedule accomodating the regular patron consisting of large numbers of wage-earners, students in school and others accustomed at least twice daily to ride to and from work or school or other places and not discouraging occasional patrons who are persons utilizing the company's facilities as a convenience rather than a necessity, being transients, transported to and from depots or those who ride only during inclement weather and the rate spread proposed is introduced for this very purpose. Hopes are entertained that the proposed fares will meet the necessities of the case; so too, were the former adjustments sponsored. But the facts have not yielded to prophecy, and we are duty bound to attempt their submission by renewed effort.

The street railway's difficulties in Butte are not the manifestation of conditions peculiar or local to that community, though of course there are considerations specially applicable to Butte, such as the ever recurrent and more or less violent fluctuation in population. The electric railway problem in 1919 was said by two members of the president's cabinet to have "assumed such serious national proportions as to warrant attention of the Federal government". Acting on the suggestion, the president established the Federal Electric Railway Commission and appointed the members thereof, who devoted over a year to an examination of the problem. Their conclusions and recommendations are embraced in a report made to the President. Careful scrutiny of the report displays the same forces at work against street railways throughout the country as in Butte. Of these, the great increase in the use of private automobiles, the jitney, and motor busses is the most serious. Whether these vehicles will introduce as fatal competition is by no means clear; the urban

and interurban public will decide the matter in accordance with their needs and ideas of efficient service. As active competitors in common carriage, it does not seem fair, however, that motor lines should stand immune from public regulation, when street railways are so subjected. We do not believe that the time has come when it is simply a matter of advancing fares as patronage declines until the point of prohibition is reached at which service cost exceeds service value, and no use is made of street railway facilities. In a community like Butte, where there will be an army of wage earners as long as deep level mining is profitable and topography militates against cheap motor transportation the going street railway system seems to be permanently established as the most nearly adequate, reliable, and satisfactory system available for transporting the maximum number of people through the streets of the city with the least interference of the use of those streets for other purposes of public ways.

Manifestly, the difficulties attending street railway operation demand the most efficient management possible and the introduction of every economy in operation consistent with reasonable service. The merits of the company's application would not have been heard were it not certain that these economies had been effected. Since January 1, 1921, the company has made steady progress in this particular. Cars not essential to adequate service, but for a long time maintained as conveniences have been removed and their crews placed on the extra list; interurban runs have been consolidated, and marked wage reductions for every person from and including the general manager through motormen and conductors to office stenographers, have been made. These efforts have resulted in a total monthly saving of \$7,230.47 under the 1920 expenses. For its part the company has complied with all conditions precedent to a rate increase having made every effort at self help necessary to healthy function.

Prior to the hearing on the company's application, its officials submitted to the car riders on July 1, 1921, under circumstances insuring a free and fair expression of opinion, the question of whether the present rates or the rates proposed would meet with the approval of patrons. Approximately 7500 ballots were distributed and of this number 2633 were voted, about thirty-five per cent of the number of persons carried on that day, voting. 2422 persons voted for the proposed rate, 102 persons for the present rate, and 109 scattering ballots were returned, embodying various modifications of the rates or defective expressions of the voter. A popular expression of sentiment is not, of course, conclusive upon the Commission.

Whatever that expression may be, we can not rely thereon to escape the duty which the statute enjoins upon us—the duty to fix a reasonable rate under the limitations of the 14th Amendment to the Federal Constitution. And it is obvious that patrons may not have in their possession all the facts requisite to intelligent decision, or that with such facts before them, the equities of all interests would be safeguarded against overmastering selfishness. However this may be, the vote in this case indicates we think, a popular, appreciation of the street railway's difficulties in Butte and a disposition to co-operate in a rate experiment to the end that some satisfactory solution may be evolved, or the improbability of such result made definite. To that extent the vote is of value here, and so accepted. We note that the company proposes ticket sales at its office of books containing 16 tickets for \$1.00. The order will require tickets to be sold throughout the city and its environs, including the company's office in blocks of four for 25 cents, or multiples thereof. This concession must be made to the common purse wherein dollars are not easily found. An appropriate order will be entered.

ORDER.

At a session of the Public Service Commission of Montana, held in its office in the Capitol, at Helena, Montana, on the 15th day of July, 1921, commencing at 10 o'clock A. M., present, Chairman Dennis and Commissioners Boyle and Ross, in the matter of the application of the Butte Electric Company, for increase in its fares and charges for street railway service in the City of Butte, Montana, and the environs of said city, Docket No. 790, this matter being before the Public Service Commission upon the application of said company, and a full investigation of the matters and things involved having been had, including public hearing under the above docket number, and the Commission having on the date hereof made and filed of record a report containing its findings and conclusions herein, which said report is hereby approved and made a part hereof, and now the Commission being fully advised in the premises:

IT IS THEREFORE ORDERED That the application of the Butte Electric Railway Company be and the same is hereby granted, and that the said company shall on or before the 20th day of July, 1921, file with the Commission, in duplicate, its tariff embodying its rates, fares, and charges, on a basis of ten cents cash and 6 1-4 cent ticket fares, and that said tariff shall be in full force and effect on and after the 20th day of July, 1921, and until the further order of this Commission in the premises.

IT IS FURTHER ORDERED That the ticket fares shall be uniformly sold throughout the city of Butte and its environs and at the office of the company, in blocks of four or multiples thereof, that is, four for 25 cents, eight for 50 cents, twelve for .75 cents, sixteen for \$1.00, etc., as desired by the patron.

IT IS FURTHER ORDERED That the Secretary shall serve by mail, a certified copy of this report and order upon each of the parties hereto, and that the same shall be in full force and effect, according to its terms, forthwith.

IN RE HELENA CAR FARES—1921

(Docket Nos. 785 and 795. Report & Order No. 325.)

(Hearings May 7, & Oct. 3, 1921. Decided Nov. 2nd, 1921.)

Street Railway—Rates—Results under Different Schedules—Interest Basis.

1. Where a street railway utility has operated under a five cent schedule for five years, a six cent schedule for nineteen months, a cash fare of seven cents and ticket fare of six and one-quarter cents for ten months, and finally under a cash fare of eight cents and community ticket of 40 rides for \$2.00 for five months, and none of these schedules have earned a fair return on a fair rate base, the Commission authorized a schedule based on a cash fare of ten cents and ticket fare of 6¼ cents.

Street Railway—Rates—Deficit—Electric Earnings.

2. A street railway operated by the same corporation which conducts an electric utility in a community may not lawfully recoup deficits in railway operations by dipping into electric earnings. The practice of treating the two utilities as one for purposes of a fair return, though indulged in to keep the railway functioning, is wholly indefensible from a legal standpoint as it burdens or tends to burden electric patrons with unreasonable rates.

Street Railway—Taxes—Gross Receipts Tax.

3. The Commission recommends that a municipality waive its franchise rights to a gross receipts tax imposed on a failing street railway in addition to all property taxes exacted from the street railway by the state, county and city as in the case of other property, for the reason that patrons who eventually pay such taxes through rates are entitled to service unburdened by as few operating costs as possible, whether imposed by public or private agency.

Application by the Helena Light and Railway Company for increased car fares on basis of 10 cents cash and 6 1-4 cent ticket. Granted.

Appearances: O. W. McConnell and M. S. Gunn for The Helena Light and Railway Company; L. K. MacNeill for Kenwood patrons, C. H. Martien as County Assessor of Lewis and Clark County, pro se; E. C. Day and J. R. Wine for the City of Helena; E. G. Toomey, Counsel, for the Commission.

Before: The Commission, **en banc**, in Helena.

By the Commission: By Report and Order No. 286, entitled "In Re The Helena Light and Railway Company",

13 M. U. R. 191, P. U. R. 1920-D 668, May 10, 1920, and denial on August 3, 1920, of petition for rehearing in Dockets Nos. 688, 704 and 726, we concluded a valuation and rate inquiry concerning the three public utilities operated by The Helena Light and Railway Company which had been in process for nearly two years. Rates evolved as a result became effective July 1, 1920. The Company, following the well established principle that rates prima facie fair, or rates whose legal efficacy is in doubt, should be given a fair trial under normal operating conditions, (if the latter could be realized, *Knoxville v. Knoxville Water Co.* 212 U. S. 1, 16, 18 and other cases cited in *City of Butte vs. Butte Electric Railway Company* 14 M. U. R. —) refrained from commencing any action to set aside the schedules prescribed by the Commission within the ninety days fixed by law. (See Sec. 26, Ch. 52, Laws 1913—the statute does not seem to recognize the fair trial principle.)

On April 20, 1921, the rates then having been operative nearly ten months, the company filed formal application for horizontal rate advances for all three of its utilities, street railway, electric and gas, alleging insufficient returns under the 1920 rates, increased plant values, and certain changes in operating conditions making the present schedules inapplicable.

By way of relief for the street railway, it was proposed that the company be permitted to experiment with a street car fare schedule resting on a basis of ten cents cash and two dollar commutation ticket for forty rides if used within fifteen days. This proposal was rejected by a majority of the Commission on May 12th, 1921, and in lieu thereof the company was directed to establish, commencing May 20th, 1921, a fare structure based on a cash fare of eight cents and a commutation ticket, price \$2.00, good for forty (40) rides if used by purchaser and family within fifteen (15) days. Provision was made for refund of unused rides. This order contemplated a sixty day experiment with the above schedule, but that period has been extended from time to time until now more than one hundred fifty days have elapsed since May 20th, when compliance was begun. No action was taken on the petitions for increases for the electric and gas utilities, and counsel have not pressed these demands.

On September 9, 1921, the company filed a further petition reciting that the experimental rates made, after a fair test, proved "unremunerative, unreasonable and wholly insufficient", and praying for a schedule based on a cash fare of ten cents, and four tickets for twenty-five cents.

The difficulties of the street railway in this community do not present a new story. As we pointed out in the report accompanying the order of May 10, 1920, eight public service companies have at one time or another, since 1886, entered the street railway field in Helena, and none with notable financial success. Since 1913 when this Commission assumed regulatory jurisdiction over the street railway's rate operations there has been a constant endeavor to formulate some rate device, between the principle that the company is entitled to a fair return upon the fair value of the property it has devoted to public use, (*Smyth v. Ames*, 169 U. S. 466) and the opposing principle that the public cannot be compelled to pay, indeed will not pay, more than the service is worth (*Covington & Lexington Turnpike R. Co. v. Sanford*, 164 U. S. 578.) which would persuade satisfactory service in Helena.

The effect of these various efforts is disclosed by taking typical periods showing results under the various fare structures.

I

FRANCHISE FARES.

Section three of the Brill Franchise of April 4, 1901, under which the company is now occupying certain streets in Helena, provides with respect to rates as follows:

"The right and privilege hereby granted shall be and remain in force for and during the period of twenty-five years from and after the passage and approval of this Ordinance. During such period the City Council shall not compel or require the Grantee to charge a less rate of fare for any continuous ride than the following, that is to say, on all lines except the East Helena line outside the city limits:

10 cents cash single fare for one continuous ride; 8 tickets for 50 cents, good for holder for one continuous ride; 4 tickets for 25 cents, good for holder for one continuous ride; 40 ride card for \$2.00, good for purchaser and his immediate family only; 2 1-2 cent tickets sold ten to the strip good for school children on school days only and during school hours; transfers at Sixth Avenue and Main street from east to west side and vice versa, and from north side to east or west side and vice versa".

EAST HELENA LINE THROUGH TRIP:

"On 6:00 A. M. cars from Helena and return, and 5:10 P. M. cars from Helena and return, 5 cents each way; on other cars 10 cents each way. Inside city limits regular fare.

But it is hereby provided, and the said Grantee agrees that whenever at the end of any calendar year ending December 31st, the total number of passengers carried upon paid fares of all kinds, on all lines, including the East Helena Branch, shall reach nine hundred thousand (900,000) he will at once reduce the rates of fare upon all lines (excepting the East Helena Branch) to five cents (5c) per fare, said rate to remain operative for periods of one year each as long as said minimum number of 900,000 fares per annum are carried by said Grantee. If thereafter at the end of any calendar year (December 31st) the total fares carried shall fall below the said 900,000 he shall have the right to resort to the schedule of fares first above stated and continue the same until the said minimum of 900,000 shall again be reached".

After this Commission was established the present company operated under the five cent franchise schedule from January 1, 1913, to June 30, 1918, with the following results:

Year	1913	(6-30) 1914	(6-30) 1915	(6-30) 1916	(6-30) 1917	(6-30) 1918
Operating Revenues	\$103,279.14	\$ 97,763.36	\$ 90,694.42	\$ 85,874.70	\$ 94,196.48	\$ 88,402.72
Operating Exp. Depreciation and Taxes	89,334.01	86,353.30	79,913.31	82,984.27	85,560.09	103,202.23
Income or Deficit	14,706.86	11,410.06	9,781.11	2,890.43	8,636.39	Deficit 14,799.51
Per cent Return on rate base of \$574,427	2.56%	1.98%	1.89%	.57%	1.5%	Loss

II

FARE INCREASE OF 1918.

Following the decision in Report and Order No. 245, 11 Mont. R. R. & P. S. C. Reports 169, when the base fare was advanced to six cents cash, the company operated

from Dec. 1, 1918, to July 1, 1920, on such schedule. Operations for the year 1919, a fair test period thereunder, show these results:

1919	Operating Revenue	Operating Exp. Dep. and Taxes	Income or Deficit	Per Cent Return
	\$ 95,020.21	\$118,842.28	\$ 19,822.07 Deficit	None

We think it easily demonstrable that operating expenses for 1918 and for 1919 noted in Tables under I and II above were purposely and unlawfully magnified, increased and padded, to approximately the amount of the book deficit, first, by the extravagant execution of necessary repair work, and second, by improperly charging necessary major replacements into operating expenses of those years,—all for the purpose of influencing the rate proceedings then pending before this Commission. These unfair tactics have never resulted in gain; on the contrary they have only resulted in public condemnation (see all past Reports and Orders) and to destroy our confidence in the petitioner's integrity. But when actual and legitimate operating expense figures were sifted from these bloated totals, and these unfair actions totally discounted, the fact remained that the company was operating at a loss. For example, strike off the \$14,000 deficit of 1918, and the \$19,000 deficit of 1919 and failure to earn a fair return still persists.

III

Fare Increase of 1920.

By the decision in Re The Helena Light and Railway Company, Report and Order No. 286, 13 M. U. R. 191, P. U. R. 1920-D, 668, the street railway moved to a schedule based on a cash fare of seven cents and a ticket fare of 6 1-4 cents, effective July 1, 1920. The company operated under this arrangement for ten months without interruption. This experiment exhibited the following:

July 1920 through April 1921	Operating Revenue	Operating Exp. Dep. and Taxes	Income or Deficit	Per Cent Return
	\$ 84,296.86	\$109,561.71	\$ 25,264.85 Deficit	None

Operating expenses for this period are open to the same criticism as made in I and II above.

IV

Fare Increase of May, 1921.

The rate structure resting on a basis of cash fares at eight cents, and a commutation ticket, price \$2.00, good for forty (40) rides if used by purchaser and family within fifteen (15) days completed a one hundred and fifty day trial on October 20th, 1921. Compared with a like period in 1920 which embraced both the 6 cent cash and the 7 cent cash and 6 1-4 cent basis, these results are disclosed.

Year	Total Cash Fares	Total Ticket Fares	Value Cash Fares	Value Ticket Fares	Total Value
1920	488,156	99,968	\$39,601.43	\$6,830.03	\$46,431.46
1921	467,872	71,182	\$38,560.53	\$3,347.70	\$41,908.23
Increase or Decrease	Decrease of 20,284 in 1921 under 1920	Decrease of 28,786 in 1921 under 1920	Decrease of \$1,040.90 in 1921 under 1920	Decrease of \$3,482.33 in 1921 under 1920	Decrease of \$4,523.23 in 1921 under 1920

During this period 1213 of the \$2.00 commutation tickets were sold. If we assume that each ticket was fully used to the extent of the forty rides thereon, 48,520 revenue passengers traveled on a five cent fare, only 3 1-2 per cent of the 1,377,028 revenue passengers carried in 1920.

The one cent increase in cash fares under this experiment undoubtedly turned a substantial number of car riders to the sidewalks, but it seems impossible to attribute a decrease of nearly 50,000 revenue passengers in the period May 20th—October 20th, 1921, as compared with the same period in 1920, to a one cent increase in cash fares, particularly where the same schedule offered a reduction of 1 1-4 cents to purchasers of tickets. The present economic depression either forces or encourages many people to walk who were riding a year ago.

Whatever the inference to be derived from these facts, it is certain that the experimental rate structure now in force not only failed to meet the hopes held out for it, but on the contrary actually proved itself less effective as a revenue producer than the 1920 schedule it superseded. Leaving out of consideration the fact that 49,070 less revenue passengers were carried in 1921 for the period May 20th—October 20th, than for the same period in 1920, and assum-

ing that as many passengers rode for said five months period in 1921 as in 1920, we find that the present rates, applied to the 1920 passengers actually earned \$1,508.92 less than the 1920 scale. The table illustrates the result:

	Number Cash Fares	Value Cash Fares	Av. Cash Fare	No. Tick- et Fares	Value Ticket Fares	Av. Tick- et Fare	Total Value Cash & Tick- et Fares
1920 May 20 Oct. 20	488,156	\$39,601.43	.0811	99,968	\$6,830.03	.0683	\$46,431.46
1921 May 20 Oct. 20	Assumed same as 1920 actually 20,284 less	\$40,224.05	.0824	Assumed same as 1920 actually 28,786 less	\$4,698.49	.047	\$44,922.54
Decrease 1921 under 1920							\$ 1,508.92

It is plain, we think, from the foregoing relation that if the street railway is to continue to function in this community some new rate device must be tried. We entertain no hopes for any scheme now proposed, for it appears **now** practically impossible to fix a nonprohibitive rate for the street railway which will earn reasonable operating expenses, an adequate depreciation reserve set up, taxes, and a fair return on the investment, bearing in mind that no radical departure from present values, revenues and expenses (as sifted by us) seems probable. To illustrate with the fares effective July 1, 1920, in the first instance: (a) Take the company's figures for the year ending December 31, 1920, (including six months under the 1920 rate advance) revenues \$100,109.69, operating expenses \$99,735.72, excluding anything for depreciation and taxes, leaving \$474.97 to apply as return; obviously it makes no difference under these conditions whether the company's investment is \$5,000.00 or \$5,000,000.00, for in either event existing fares have not earned a fair return on either extreme. (b) Now take the company's figures on operating expenses, depreciation and taxes, total \$133,961.04; assume that these costs could be reduced one-half—cut in two—to \$66,980.52, leaving but \$20,000.00 for all expenses above the cost of power and conducting transportation, but that the revenue would remain the same, \$100,109.69. There is left \$33,129.17 to apply on a rate base of \$574,427.00, or a return of 5.7 per cent, scarcely a sufficient return to persuade capital outlay in a jurisdiction where the legal rate of interest, fixed in 1899, is 8 per cent (Sec. 5211, Revised Codes, 1907). (c) Now assume that each one of the 1,377,028

revenue passengers carried in 1920 had paid 10 cents cash (and no one has yet seriously suggested a straight ten cent cash fare as feasible). This would have produced \$137,702.-80, or \$3,741.76 in excess of the company's figures for operating expenses, depreciation, and taxes, a return of 65 hundredths of one per cent on the rate base. Only by eliminating all of the 1920 expenses for maintenance of way and structures, and all of the 1920 expenses for maintenance of cars and equipment, a total of \$36,109.44, would a straight ten cent cash fare have approached a fair return. (d) Again, assume that one-half of the 1920 revenue passengers or 688,514, paid a 15 cent cash fare and the other half a 10 cent ticket fare. This would have produced a revenue of \$172,128.50, yielding, over the company's expense figures, \$38,167.46, or \$7,786.70 short of a return of 8 per cent per annum on the street railway base of \$574,427.00. (e) If the rate base were cut in half, to \$287,213.50, the 1920 fares continued, and we assumed that the state, county, and city waived their respective claims to taxes, totaling \$17,400.00, and the company waived any allowance for depreciation, \$16,825.32, and refrained from any repair work on way and structures, and cut general office salaries in half, it would then be possible, on the basis of 1920 operations, to earn an eight per cent return on fifty per cent of the company's investment. The prohibitory character of straight ten cent and fifteen cent cash fares, the legal impossibility of disallowing all of the expense items mentioned, or of cutting the rate base, is plain to anyone familiar with the problem. But the illustrations may serve the purpose of emphasis, and to awaken the residents of Helena to a realization of the precarious condition of the street railway system.

To relate the causes for the present plight of this street railway would be to write a commentary on local public utility history, salient features whereof would be found in the rosy hopes of pioneer entrepreneurs who constructed rail lines for a city of greater population and extent than Helena has proved to be in the time allotted for it to grow up to the rail system provided, in the advent of motor cars now widely distributed in private ownership, where individual use and neighborly accomodation, more than open business competition, threaten the very life of the system, in the undreamed of advance in operating expenses, so great that in 1920 the single expense item of conducting transportation (chiefly power purchased and wages of conductors, motormen and transportation), amounting to \$46,155.84, exceeded by more than \$1,000 the sum which could be realized from 900,000 revenue passengers at five cents per trip, and yet 900,000 revenue passengers was the number de-

terminated upon in the 1901 franchise as the turning point from 10 cent fares to 5 cent fares; and finally, in a service at times so indifferent and unresponsive to public needs and desires that empty cars leave the depots but a few seconds before incoming trains offer a score or more of passengers, and other prospective passengers waiting on street corners for cars long delayed are scooped up by passing motors.

The query naturally arises, if these things are true, how has the street railway functioned at all? The answer is that the street railway has been able to operate because the patrons of the electric utility owned and operated by the same corporation have, through the rates in effect, paid sufficient sums, annually, to permit the street railway to dip into the electric earnings to recoup deficits in the former's operating expenses, depreciation, and taxes, and to apply on a return. This means, of course, that the Commission has tolerated the practice, wholly indefensible from a legal standpoint (and so condemned in every rate case from *Smith vs. Ames*, 169 U. S. 466 to *Vandalia Railroad Company v. Schnull & Company*,— U. S. —, decided February 28, 1921 and reported in P. U. R. 1921-C, 507; see the cases collected in *Re Eastern Montana Light and Power Company*, 14 M. U. R.—, P. U. R. 1921-C, 91) of treating the three utilities as a whole and fixing rates to yield a fair return on the aggregate value of the three utilities. This course has been followed solely for the purpose of saving the street railway to the city of Helena, and it has been consciously acquiesced in for many years by the public utility patrons of the community.

We have contented ourselves with a brief review of the outstanding features of this case, first, because no useful purpose would be served in reploughing the ground composed by the two year rate inquiry concluded in 1920, and, second, because the features noted, without more, demonstrate that there is nothing left to do but to permit the company to inaugurate the 10 cent cash fare, prayed for since 1918, with a companion ticket scale on a basis of 6 1-4 cents per ticket without any time limit for use of such tickets. We indulge in no prophecy as to the probable effect of this schedule; we hope it will measure up to the bare necessities of the case. We will be agreeably surprised if it does more. The owners and managers of the utility, must understand that a more enlightened vigilance in keen and responsive public service now devolves upon them in consequence of granting their demands, for these demands are formulated on their judgment that the schedule will meet the needs of the street railway in rendering efficient service. In a word, it is now squarely up to the owners and

managers to prove the soundness of that particular judgment, we being satisfied with proof of necessity for higher rates.

Decision herein has been delayed somewhat out of a desire to insist on the accomplishment of certain economies in operation by curtailment of service and otherwise which we thought should be affected under rate scales now in force, so as to afford a fairer test of these scales under less expensive operation. It appears now, however, that the slightest curtailment of service proposed as one saving, namely, abandonment of service on Main Street South of Sixth Avenue, as well as the proposals to discontinue service on the Upper Broadwater-Kenwood line, are the subject of bitter protest on the part of car riders, property owners, and others. Indeed, the company's threat to take up the Kenwood line met with arrest, almost in its utterance, by a restraining order of the District Court of Lewis and Clark County. In the face of these facts it would be unfair to prejudice possible future action in the premises before this Commission, by now acting on the merits of these proposals, or for that matter discussing them save to say that in our view, this, and not the courts, is the proper forum wherein questions of abandonment of service, etc., should be first tried out. (See the cases collected in *Re Butte Electric Company* 13 M. U. R. 288, P. U. R. 1920-E, 760.)

There is one matter, however, that the company and the city officials should at once consider, as a possible means of relief to the street railway's patrons and as a further step in the direction of insuring continued service. The matter referred to is the elimination of the present royalty paid the city, computed as a certain per cent of the gross passenger receipts for each year, according to Section 4, of the Brill franchise. This section reads as follows:

"It is understood and said Grantee does hereby agree to pay to the said City of Helena as a consideration for this franchise the following percentages upon the gross amount of his passenger receipts, using the similar business of the Helena Power and Light Company for the year ending December 31st, 1900, as a basis upon which to compute the same, to-wit:

"Upon the present amount or less, of the company's passenger receipts, one (1) per cent.

"When such passenger receipts have increased twenty (20) per cent over those of the year 1900, one and one-quarter (1 1-4) per cent upon the total receipts.

"When such passenger receipts have increased forty (40) per cent over those of the year 1900, one and one-half (1 1-2) per cent upon the total receipts.

"When such passenger receipts have increased sixty (60) per cent over those of the year 1900, one and three-quarters (1 3-4) per cent upon the total receipts.

"When such passenger receipts have increased eighty (80) per cent over those of the year 1900, two (2) per cent upon the total receipts.

"Such percentage to be computed on the 31st day of December, of each year, for the preceding year's business, and paid to said City of Helena in cash on the 15th day of the following January, of each year. But it is further understood and agreed that nothing in this Ordinance contained shall be taken or construed as requiring the Grantee to continue the operation of said railway lines or any part or portion thereof at a loss".

Since this is a gross receipts tax, as distinguished from a net income tax, it has always been charged to operating expenses in order to put the utility on a level with other industries. Indeed this method of treating even federal income taxes has been frequently followed by reputable courts and commissions. It follows that the patron is paying the utility's taxes through rates, for the latter are constructed to absorb legitimate operating expenses, of which taxes are an item. With this utility however, the imposition of this royalty is a particularly unreasonable burden, because it is a tax exaction **above and in addition** to the property taxes paid the state, county and city, and under it thousands of dollars have been collected from car rides. It is a relic of the days when franchises were evolved out of a spirit of bargain and sale, with no clear conception of the street railway's function as a public service corporation and without regard for patrons' right to a service unburdened by as few operating costs as possible, whether imposed by public or private agency.

Nothing herein contained is to be taken as an intimation that the gas or electric rates have enjoyed that fair trial which the courts require before rates be condemned as not "by any possibility" being fair, (Learned Hand, D. J., in **Consolidated Gas v. Newton**, P. U. R. 1920-F, 483, 537; and see the cases collected in the same opinion at page 490.) "It is by the average of the year that business commonly reckons its losses and its gains". **Minneapolis Gas Co. v. Public Service Commission**, 225 N. Y. 89, 98, P. U. R.

1919-C 364, 369, 121 N. E. 772, 775. **People Ex Rel Gas Company v. Public Service Commission**, 194 App. Div. 578, 186 N. Y. Supp. 177, P. U. R. 1921-B, 485. And we may add that a year is a comparatively fleeting period for a business operating in theory at least, in perpetuity. An appropriate order will be entered.

ORDER.

At a session of the Public Service Commission of Montana held in its office in the Capitol, Helena, Montana, on the 2nd day of November, 1921, commencing at ten o'clock A. M., present Chairman Dennis and Commissioners Boyle and Ross, in the matter of the application of The Helena Light and Railway Company for an order establishing a schedule of fares for street car service in the city of Helena and vicinity, on a basis of ten cents cash and a six and one-quarter ticket fare, this matter being before the Commission upon the application of said company, and a full investigation of the matters and things involved having been had, including public hearings on the issues herein, and the Commission having on the date hereof made and filed a report containing its findings and conclusions therein, which said report is hereby approved and made a part hereof, and the Commission now being fully advised in the premises,

IT IS ORDERED That on or before the 5th day of November, 1921, the Helena Light and Railway Company shall file with the Commission tariffs, establishing a schedule of street railway fares and charges as follows, to-wit:

City of Helena Lines

Helena Avenue, 10 cents cash, or $6\frac{1}{4}$ cent ticket.
Eighth Avenue, 10 cents cash, or $6\frac{1}{4}$ cent ticket.
To end of line at Kenwood, 10 cents cash, or $6\frac{1}{4}$ cent ticket.
State Street, 10 cents cash, or $6\frac{1}{4}$ cent ticket.

Lower Broadwater Lines

To Lang's Crossing, 10 cents cash, or $6\frac{1}{4}$ cent ticket.
To Broadwater Station, 10 cents cash, or $6\frac{1}{4}$ cent ticket and 4 cents cash.
(Plunge and Hotel)
To State Nursery Station, 10 cents, or $6\frac{1}{4}$ cent ticket and 4 cents cash.

Fort Harrison Lines

Fort Harrison (From or to City) 15 cents cash, or $6\frac{1}{4}$ cent ticket and 9 cents cash, or 2 $6\frac{1}{4}$ cent tickets and 3 cents cash.
Fort Harrison (From or to Broadwater Station) 5 cents cash.

East Helena Lines

Within city limits, 10 cents cash, or $6\frac{1}{4}$ cent ticket.
To or from East Helena, 15 cents cash, or $6\frac{1}{4}$ cent ticket and 9 cents cash (one way.)
From or to Helena (City Limits Only) 10 cents cash, or one $6\frac{1}{4}$ cent ticket and 4 cents cash.
SMELTER CAR, 8 cents cash.

This eight-cent rate is good only on car making one round trip in morning and one round trip in afternoon. The schedule of said car to be arranged to accomodate the greater number of smelter employes traveling together on any single trip. This rate is also available to the public riding on smelter employes' car.

Fair Grounds Lines.

From or to Fair Grounds, 25 cents cash fare.
Round trip, 50 cents cash fare.

School Children.

A

School children on school days and during school hours.

Single trip tickets, 3 cents.
Round trip tickets, 6 cents.

B

East Helena.

School children on school days and during school hours.

Single trip tickets, 6 cents.
Round trip tickets, 12 cents.

Transfers.

Same regulations as heretofore.

IT IS FURTHER ORDERED That said schedule, so established, shall become effective on the 15th day of November, 1921, and remain in effect thereafter until the further order of this Commission.

IT IS FURTHER ORDERED That the Secretary shall serve by mail a true copy of this order upon each of the parties hereto and that the same shall be in full force and effect forthwith according to its terms.

BOOK I PART III
MONTANA TRADE COMMISSION

MONTANA TRADE COMMISSION

For the Control of Public Mills

FORMAL ORDERS

November 30, 1920, to November 30, 1921

In re Application of Montana Millers' Association
for an Increase in Conversion Charges,
Custom Grinding Charges and
Tolls.

(Docket No. 759. Report and Order No. 307.)
(Hearing Sept. 15, 1920. Test Run Oct. & Nov., 1920.)
(Decisions, September 27, 1920 & December 27, 1920.)

Conversion Charges—Custom Grinding Tolls—Test Run—Increases.

1. Following Report and Order No. 296, 13 M. U. R. 359, public mills subject to the jurisdiction of the Montana Trade Commission, made a two months' test run to determine proper cost basis for prescription of rates. The test made under fair conditions, demonstrates that the conversion charges and custom grinding tolls prescribed by Report and Order No. 267, June 14, 1919, 13 M. U. R. 351, fall perceptibly short of meeting essential operating expenses and wholly fail to afford any return for the service rendered or product sold. Ten cent increase on each step in the schedule granted.

Public Mills—Regulations—Flour Returnable.

2. The number of pounds of flour returnable as shown by paragraph "b" of Rule 3, of Rules for Montana Public Mills, means **straight flour**, and in the event the miller has no straight flour or the wheat owner desires a higher grade, the wheat owner shall be entitled to receive such percentage of high grade or patent flour as the grade he selects bears to straight flour.

Application by Montana Millers' Association on behalf of member mills and millers for an increase in conversion charges, custom grinding charges and tolls; granted after two months' test run.

Appearances: George Thorson, Townsend, J. H. Reid, Great Falls, for the applicant; J. T. Carroll, Helena, for the Montana Farmers' Union; E. G. Toomey, Counsel, B. T. Stanton, Mill Expert, R. F. Bentzin, Mill Examiner, for the Commission. Before: Commissioners Boyle, McCormick and Dennis.

By the Commission: This report and order results directly from our action in Report and Order No. 296, 13 P. U. R. 359, and is a continuance thereof. The latter should be read in connection with this disposition, and with this reference to it we omit total incorporation of Report and Order No. 296 herein. We declined to grant petitioners the increase sought in September, 1920, holding that the cost figures then found to prevail arose from an abnormal op-

erating period, July 1, 1919—June 30, 1920, wherein an impoverished grain crop, curtailed operation, but, notwithstanding, the maintenance of the usual overhead, produced costs so exceptional and variable that we could not utilize them on any theory for the purpose of forecasting proper charges and tolls for the 1920-1921 season.

In concluding the September proceedings, we said:

"We cannot prescribe rates for the future except on the experience of the past. The prediction of toll and conversion charges now, on the results of operations for the period under examination, when nearly half of the mills under our jurisdiction were closed for lack of wheat, and when the remainder were endeavoring to preserve themselves for better times on a scanty wheat supply, would be sheer speculation, the consequences of which might prove utterly unfair to all here concerned.

"In order, therefore, to find an experience basis which may serve as a reliable fact anchorage for the prescription of rates, tolls and charges which shall give these petitioners the just and reasonable return which is guaranteed them by the 14th Amendment, and our own Constitution and laws, we shall select the months of October and November, 1920, for a test run. The record shows that this period will approach the norm, as we now know the norm, both in quantity of wheat available for milling and in number of mills operating. At the end of that time, or as soon thereafter as the two months' data are available, after examination and check, we shall be in position to pass upon this application in the light of reliable evidence, now lacking. In the meantime this application is denied, and the rates, tolls and charges established by our Report and Order No. 267 will continue in full force and effect as the legal rates, tolls and charges for the services and operations therein named".

While the instant application was formerly presented only by members of the Montana Millers' Association, we have broadened the scope of the inquiry to include all mills under our jurisdiction and the test run was required of them all, so complete evidence is not lacking because all mills and millers do not appear as applicants. They are all parties hereto by submission to Report and Order No. 296.

Toll Rates and Conversion Charges.

The evidence taken during the months of October and November, 1920, conclusively establishes the necessity for increasing the conversion charges and toll rates of these applicants if they are to receive that reasonable charge for their services and products which Chapter 223, Session Laws 1919, commands us to provide. We say "conclusively" with full consciousness of the forces now dominating the composition of costs and values and working, apparently to a new low level, for the months of October and November, 1920, exhibited precipitate declines in values which were directly reflected in the operating costs of the mills under our jurisdiction, the operators being quick to follow reductions in values by reductions in their costs when possible. By the selection of these two months for a test the consumer enjoys an advantage not clearly foreseen in September, namely, the recent price decline in addition to the advantage of a more normal operating period. Whether the present decline is to continue in unabated force so that present rates may eventually prove compensatory we have no means of knowing. We can act only on the facts now known to us and these show that notwithstanding the reflected price decline, the present tolls and conversion charges do not meet the minimum requirements. That we were justified in ordering the test run in an endeavor to discover normal and stable factors is shown, in a measure by the fact that the mills under our jurisdiction ground, during October and November, 1920, 1,295,460 bushels of wheat, a little over one-third as much as was ground by all the mills in Montana during the entire fiscal year ended June 30, 1920, in which period 3,665,129 bushels of wheat were ground into grain products; moreover nearly all the mills were operating steadily.

Eliminating ten mills from any consideration herein, because during the two test months special factors exclusively affecting them, produced excessive administrative costs or brief operative periods, which factors it would be unfair to weigh into the average, we find the average manufacturing and overhead cost per bushel for mills of each class for the test period to be as follows:

I

Mills of 100 bbls. and Over, Daily Rated Capacity.

These mills, with a twenty-five (25) cents per bushel allowable toll or conversion charge show an average of twenty-eight and five-tenths (28.5) cents per bushel actual cost for manufacturing and overhead expense.

II

Mills of Over 25 bbls. and Under 100 bbls., Daily Rated Capacity.

These mills with thirty (30) cents per bushel allowable toll or conversion charge show an average of thirty-five and three-tenths (35.3) cents per bushel, actual cost for manufacturing and overhead expense.

III

Mills of 25 bbls. and Under, Daily Rated Capacity.

These mills with thirty-five (35) cents per bushel allowable toll or conversion charge show an average of forty and nine-tenths (40.9) cents per bushel actual cost for manufacturing and overhead expense.

IV

Interior Mills Located 20 miles or More from Railroad.

These mills with forty (40) cents per bushel allowable toll or conversion charge show an average of forty-seven and three-tenths (47.3) cents per bushel actual cost for manufacturing and overhead expense.

Of course, there are in mills of each class, above, some which show results relatively far above or below the average per bushel expense here found, but we are not asked to take account of individual mills. The application is submitted on the theory that a horizontal increase will meet the deficiencies now existing in mills of all classes, and that individual treatment is not essential at this time. It may be that we shall soon have to abandon the relatively rough classification of mills, for toll-making purposes, according to their daily rated capacities, and find some other basis of classification, or depart from any attempt at classification and prescribe tolls and conversion charges for each mill separately considered but the suggestion therefor should come from miller or consumer.

The figures above are actual costs, and do not include any profit. They demonstrate, to us, after careful check as to the legitimacy of every item entering into their composition, and we specifically find, that the present toll rates and conversion charges prescribed by Report and Order No. 267 (against which the cost figures are placed in the tables, *supra*.) fall perceptibly short of meeting essential operating expenses and wholly fail to afford any return for the service rendered or product sold.

The measure of relief necessary, as conceived by applicants, that is, a ten cent increase on each step of the schedule, will be granted. It will supply the amount re-

quired to meet operating expenses, with a varying surplus to apply for a return. If the surplus will not, in all cases, provide a fair return, it must be remembered that the result accords with applicants' request, and they can not be heard to complain of the application of a remedy which they themselves propose; no mill or miller has suggested any other quantum of relief than that proposed by the petitioning association.

Our attention is called to the fact that custom grinding tolls do not contemplate a charge for "selling expense," and to such extent it is said that they should be lower than the conversion charge established for merchant milling or commercial marketing of which "selling expense" is a natural ingredient. The suggestion arises from a misconception of our action and it is thought that we regard both operations as identical because the rates for each happen to be expressed in like figures. It is true that the simple custom grinding or exchange operation excludes any expense incident to the sale of the finished product, for the reason that there is no sale involved. But while the exchange transaction does not call for the employment of salemen, and the creation of persuasive propaganda at least to the same extent as in the case of open-market selling, there is always necessary the service of employees to make the exchange, including weighing, grading, bookkeeping, loading and unloading, and these services must be compensated. We do not say that such services approach the "selling expense" of the great merchant millers in a normal season, but the divergence for the present when "selling expense" has been cut to the minimum, is not of sufficient magnitude to warrant any more precise segregation and allocation of these costs than we have made.

Change in Rules.

Administration of the rules promulgated in Report and Order No. 267 discloses some misunderstanding in regard to the grade of flour which the wheat owner is entitled to receive under the provisions of Rule 3. The number of pounds of flour returnable as shown by paragraph "b" of Rule 3 means **straight flour**, a fact not hitherto plainly understood. The language of the rule will be changed so as to make that fact clear, and, in the event the miller has no straight flour or the wheat owner desires a higher grade, to provide that in either instance, the wheat owner is entitled to receive such percentage of high grade or patent flour as the grade he selects bears to straight flour. The modification of the rule will in no manner change the ratio of the manufactured product which the wheat owner is entitled to receive for each sixty (60) pounds of wheat he delivers. An appropriate order will be entered.

ORDER.

At a session of the Montana Trade Commission of the State of Montana, for the Control of Public Mills, held in its office in Helena, Montana, on the 27th day of December, 1920, in re application of the Montana Millers' Association for an increase in the rates, tolls and charges for custom grinding and merchant milling within the State of Montana, this matter being before the Commission upon said application filed August 31, 1920, and hearing having regularly been had thereon, and a full investigation of the matters and things involved having been had pursuant to the provisions of Report and Order No. 296, filed herein on September 27, 1920, and the Commission having on the date hereof made and filed of record a report containing its conclusions therein, which said report is hereby approved and made a part hereof,

IT IS THEREFORE ORDERED That said application be, and it is hereby granted.

IT IS FURTHER ORDERED That, commencing January 1, 1921, the following rates and tolls shall be charged for custom grinding or exchange basis operations in all mills under our jurisdiction, to-wit:

For a mill of twenty-five (25) barrels and under, rated daily capacity of twenty-four hours run, forty-five (45) cents per bushel; for a mill of twenty-five (25) barrels and under one hundred (100) barrels rated daily capacity of twenty-four hours run, forty (40) cents per bushel; for a mill of one hundred (100) barrels and over rated daily capacity of twenty-four hours run, thirty-five (35) cents per bushel; for interior mills located 20 miles or more from a railroad, fifty (50) cents per bushel.

IT IS FURTHER ORDERED That, commencing January 1, 1921, the following conversion charges shall be exacted for merchant milling or commercial marketing in all mills under our jurisdiction, to-wit:

For a mill of twenty-five (25) barrels and under, rated daily capacity of twenty-four hours run, forty-five (45) cents per bushel; for a mill of twenty-five (25) barrels and under one hundred (100) barrels rated daily capacity of twenty-four hours run, forty (40) cents per bushel; for a mill of one hundred (100) barrels and over rated daily capacity of twenty-four hours run, thirty-five (35) cents per bushel; for interior mills located 20 miles or more from a railroad, fifty (50) cents per bushel.

IT IS FURTHER ORDERED That paragraphs a, b, c, and d of Rule 3, Report and Order No. 267 shall be and they are hereby amended to read as follows:

RULE 3. Custom Grinding, Exchange or Toll Basis.

- a. Any owner of wheat shall have the right to deliver hard spring wheat or hard winter wheat of good milling quality to the milling plant for the purpose of having it exchanged into flour and mill feed, and the miller must accept same for that purpose and shall, if operating, forthwith deliver to the owner flour and mill feed in exchange therefor.
- b. In exchange for each bushel of sixty pounds clean wheat, fifty-nine pounds of flour and mill feed must be delivered in the following quantities:

Test Weight of Wheat per Bushel	Number Pounds Straight Flour Re- turnable	Number Pounds Mill Feed Return- able
58 lbs. or more.....	42	17
57 lbs.	41½	17½
56 lbs.	40½	18½
55 lbs.	40	19
54 lbs.	39½	19½
53 lbs.	38½	20½
52 lbs.	37½	21½
51 lbs.	37	22

- c. The number of pounds of flour returnable as shown by the foregoing table means straight flour. If the miller has no straight flour or the wheat owner desires a higher grade, then in either case the wheat owner is entitled to receive such percentage of high grade or patent flour as the grade taken bears to straight flour. The wheat owner is entitled to the remainder of his fifty-nine pounds of product in mixed mill feed.
- d. The wheat owner shall have the option of taking his mill feed as follows: 100 per cent mixed mill feed (bran and shorts) or 65 per cent bran and 35 per cent shorts or standard middlings. If any miller, owing to the equipment of his plant, is unable to make the above apportionment, flour and mixed mill feed (bran and shorts) shall be delivered instead.

IT IS FURTHER ORDERED That, save as herein changed or amended, all and singular the provisions of Report and Order No. 267, Montana Trade Commission, shall continue and be in full force and effect.

IT IS FURTHER ORDERED That, the Mill Expert and Mill Examiner shall forthwith prepare, print and publish on heavy cardboard suitable for tacking up in mills and elevators, such portions of Report and Order No. 267, and this Report and Order as will inform all concerned of the

rates, tolls, charges and rules governing custom grinding or merchant milling, and that the same, when approved by us shall be properly posted in every mill under our jurisdiction, and that each mill shall maintain the same so posted until our further order.

IT IS FURTHER ORDERED That the Secretary of this Commission shall serve each of the parties hereto and each mill under the jurisdiction of this Commission with a true copy of this Report and Order, and the same shall take effect forthwith.

Helena, Montana,
December 27, 1920.

BOOK I , PART IV
MONTANA IRRIGATION COMMISSION

MONTANA IRRIGATION COMMISSION

History of the Irrigation Law and its Connection with the Public Service Commission.

A law was passed by the Montana Legislature in 1907 (Ch. 70, Laws 1907) providing for the organization of irrigation districts, and confiding the supervision and control of bond issues to the boards of county commissioners. These provisions were not looked upon favorably by bonding houses so the act was repealed in 1909 and an improved statute (Ch. 146, Laws 1909) passed, placing essential control of all proceedings with the district courts.

A special session of the Legislature in 1919 created the Montana Irrigation Commission, (Ch. 14, Laws, Extra Session, 1919) and assigned to it the same personnel as the Board of Railroad Commissioners. Its duties were to encourage irrigation within the state and supervise the organization of irrigation districts electing to come under its jurisdiction.

The operation of this law proved to be measureably responsive to popular needs and within a year and a half, sixteen districts had elected to organize under its provisions. This enactment was a step in the right direction so far as direct and continuing state supervision of districts is concerned but it soon became apparent that its provisions were inadequate to give the Commission the proper jurisdiction needed to strengthen the value of the bonds. Accordingly, this statute was submitted to a large number of bonding houses in the United States, with request for their opinions and suggestions of changes needed to properly market the bonds. Many valuable replies and legal opinions were received, and these seemed to suggest that Montana's greatest need was for a law that would place entire administrative supervisory control within one body and thus standardize the procedure, to the end that bonding houses might become readily familiar with the operation of the statute in any given case, and know how to place a value on irrigation securities. It was deemed advisable to substitute an entirely new law rather than amend the old one, and therefore the Montana Irrigation District Law (Ch. 14, Laws Extra Session, 1919) was repealed in its entirety and in 1921 a new law (Ch. 153, Laws 1921) substituted, re-enacting all of the good features and including the suggested improvements. Its administration was confided to the Public Service Commission of Montana.

In addition to the sixteen districts already under the Commission's jurisdiction, five new ones have elected to

take advantage of the Act making a total of twenty-one districts now organizing under the new provisions.

This 1921 statute centralizes and standardizes the procedure and organization, thus making it easier for bonding houses to become familiar with Montana Irrigation bonds and know how to place a value on them. The advantages in centralizing the work and having a definite and authentic source of information have already been demonstrated. Legal procedure and directors' meetings are supervised so that no technical errors may creep in to invalidate the securities, and furthermore a check on the management and financial conditions of the district is made by the State Examiner.

An advantage the farmer has under this new law is the fact that the original bond issue can be made large enough to include the first three years' interest thus releasing him of this burden until he begins to realize returns from irrigation. The bonds can be made to run as long as 40 years, and payments to create a sinking fund to take up the bonds need not be made until the 20th year before maturity.

Irrigation in Montana has suffered considerably in the past through unscrupulous promoters whose only interest in the undertakings has been their own financial ends. Naturally investors in bonds who have suffered from this class of securities are no longer favorable toward the old system. A land owner under the new act has far more protection than ever before. He is no longer at the mercy of promoters but on the contrary, he has a definite and dependable authority to rely upon for advice as to the feasibility of the undertaking before making any great outlay of time and money.

Different Organizations for Irrigation Development.

In the development of irrigation in Montana, several different types of organization have been used. These, named in the order of their evolution, are as follows: private ditches, partnership ditches, mutual ditch companies, commercial irrigation companies, "Carey Act" projects, U. S. Reclamation projects, irrigation districts. And the evolution is not yet complete. Each of these systems has had its place in irrigation development.

The private and partnership ditches are quite suitable for lands lying along the streams, where diversion is easy. The mutual ditch company is able to handle lands in larger units and more removed from the stream.

The commercial enterprises have more often been confined to reservoir or pumping projects. "Carey Act" pro-

jects are best suited to develop and colonize large tracts of public land, by private capital, under state supervision. U. S. Reclamation projects develop and colonize public lands with government money and under government control.

Irrigation districts are intended to develop large areas of land in private ownership (and preferably in small holdings), thru funds raised by bonding the lands, administered under local control and aided and safe-guarded by state supervision or under jurisdiction of the court. The district system is best adapted to old irrigated sections needing revision, consolidation, improvement and extension of the irrigation system. It also has a big field of usefulness in developing new lands where the construction cost is relatively low and the present value somewhat commensurate therewith. It is a common mistake to suppose that the irrigation district system is applicable to all projects. Under this false assumption, many irrigation districts have been created for projects of a doubtful character, some of these, though apparently feasible under some other organization, cannot succeed as irrigation districts, and others are wholly unfeasible schemes intended only for the benefit of promoters. Although the irrigation district is now the most general organization for irrigation development, yet it has its limitations as do all other systems, and several Montana projects now contemplated must await their development under some more advanced system not yet fully evolved, and all "wild-cat" schemes must be branded as such and completely eliminated from the irrigation field.

HOW TO INITIATE AND CREATE AN IRRIGATION DISTRICT.

According to the Montana Irrigation District Law, Chapter 153 of the Laws of the Seventeenth Legislative Assembly, 1921.

Temporary Organization.

A group of dry farmers may be imbued with the idea that irrigation possibilities exist within their neighborhood, but do not know how to proceed with the organization of a district and furthermore they are afraid of becoming too heavily involved financially by including their lands in an irrigation district before they are advised definitely whether or not there are any possibilities. The primary purpose of

this law is to remedy these two evils and encourage irrigation within the state on a sound and economical basis. (Sections 2 & 3).

The first step to initiate a district is to call a meeting of the local people interested and appoint an irrigation committee. This meeting may be called by your farm bureau, the chamber of commerce or any other local organization or by any one or more of the farmers or business men who are interested.

Engineering Advice.

If this committee is in doubt as to the irrigation possibilities that may exist it can apply to the Public Service Commission (formerly known as the "Montana Irrigation Commission") for the services of one of the Commission's engineers who will spend a day or two in the field with the committee and give it advice or any assistance necessary to initiate the petition if the project seems to warrant it.

For these services of the engineer, the local people will be required to stand his actual expenses (not including his salary) from Helena and return.

Preparing Petitions.

Blank forms of petitions as outlined in Section 4, may be secured, free of cost, from the Commission in Helena, upon application.

The signers to the petition (Section 35) must represent a majority of both the acreage and the number of land owners within the district. (Section 4.)

The title owners shall be taken from the preceding year's assessment rolls or on certificate of the county clerk and recorder or register of the State Land Office. (Section 4.)

Care should be exercised in having the signatures agree with the names of the record title owners.

The signatures do not have to be acknowledged before a notary. (Section 35.)

The petition can be signed in any number of original parts with the same effect as though all had been affixed to the one petition. (Section 35.)

A bond sufficient to guarantee all costs if the district is not created, shall accompany the petition, and also, a map showing an outline of the lands within the proposed district. (Section 4.) The map may be roughly drawn and need not show canal lines, reservoirs, etc., if such data are not available.

The petition must be filed in duplicate with the clerk of the court with a request that one copy be forwarded to the Montana Public Service Commission. (Section 4.)

Cost of the Investigation.

Upon receipt of the petition the Commission will notify the petitioners of the estimated cost of making an investigation and report on the feasibility of the project. (See below, cost of investigating other projects.) (Section 4.)

The local people will have to raise this money by popular subscription, or donations, or otherwise.

The amount will be remitted to the Commission and turned over to the State Treasurer to the credit of the Montana Irrigation Fund. (Section 4.)

The Commission's engineers will then make a field examination and submit a complete report to the Commission upon the feasibility of the project and advisability of creating the district. (Section 4.)

The Commission will make its recommendations as to the costs and benefits derived and file a certified copy of the report and its recommendations with the clerk of the court which copy is competent and relevant testimony in all subsequent court proceedings. (Section 4.)

The expenses of making the field examination and report (not including the engineer's salary) will be deducted from the deposit made and the balance, if any, returned to the petitioners. (Section 4.)

Hearing on the Petition.

After the report has been filed, the judge of the district court shall fix a time and place when the petitioners will be heard. (Section 5.)

A notice of the hearing and copy of the petition will be published in a local newspaper once a week for two successive weeks at least thirty days prior to the date of hearing. (Section 5.)

Within three days after the first publication, the clerk of the court will mail a copy of the notice of hearing to each land owner in the district. (Section 5.)

Any interested person who may be damaged by the creation of the district may appear at the hearing and offer testimony. The court may permit the petition to be amended and give notice of another hearing. (Section 6.)

The court may make changes in the district but cannot exclude lands if the owner has filed written request to be included. (Section 6.)

Lands not benefited, or having water rights, or irrigable from some source more feasible cannot be included without the owners' consent in writing. (Section 6.)

Lands in the district need not be contiguous and any tract can be excluded. (Section 6.)

Creating the District.

If the court finds the petition irregular or insufficient, then it shall dismiss the petition and the petitioners shall pay all costs. (Section 6.)

Herein comes the importance of having the correct form of petition, a correct list of owners, the signatures corresponding with the ownerships, and a sufficient number of signers both in number and acreage. The Commission will check over all these points (except verify the list of ownerships) before requesting the deposit.

If the petition is regular, the court will enter an order establishing the district, describing the lands, dividing the district into three five or seven divisions approximately equal in area and number of owners, and appoint a director for each division. (Section 6.)

Such order is conclusive and final unless appealed to the Supreme Court within 60 days. (Section 6.)

The district so established is declared a corporation for the public welfare and the lands are then taxable for the purpose of this act. (Section 6.)

Organization of Board of Directors.

Each director so appointed shall file a bond for \$2,000.00. (Sections 7 & 38.)

Within ten days the directors shall meet and organize. (Section 8.)

They shall appoint one of their number as President. (Section 8.)

They shall also elect a Secretary, who may or may not be a director. (Section 8.)

At this meeting the board shall designate its office and place of meeting which shall be in the county having the major portion of the area of the district. (Section 8.)

All board meetings shall be public. (Section 9.)

The board can adopt its own rules and by-laws. (Section 9 & 12.)

The board so organized is the corporate body of the district.

It can sue, be sued, make contracts, appropriate water, purchase rights of way, or existing irrigation works all in the name of the district, and execute the business of the district. (Section 12.)

All purchases or contracts made by the board which amount to more than \$2,500 must first be approved by the Public Service Commission. (Sections 2 & 12.)

Salaries of Secretary and Directors.

The salary of the Secretary and all employees shall be fixed by the board of directors. (Section 8.)

The directors shall receive \$5.00 per day for the days spent in serving the district. (Section 10.)

The directors shall also receive expenses while serving the district and the amount of the premium on their bonds. (Section 10.)

Resident Engineer.

Within 30 days after the board of directors has organized, they shall appoint a competent civil engineer, as their district engineer. (Section 11.)

The board shall draw up a contract with him setting forth his services and salary and submit the same to the Public Service Commission for its approval before making definite appointment. (Section 11.)

The board may require the resident engineer to give a bond in an amount to be decided upon by the board. (Section 70.)

The district engineer shall have control of all engineering work under the direction of the chief engineer of the Commission. (Sections 11, 12, and 20.)

The employment of consulting engineers shall be governed by the same rulings. (Section 11.)

The final plans, maps, field notes and report shall be submitted to the board to be forwarded to the Public Service Commission. (Section 12.)

Commission's Approval and Final Report.

The Public Service Commission shall check over the plans and report, make additional surveys and order changes, if necessary, before final adoption of the plans and report. (Section 13.)

After adoption the plans shall be known as "The Plan of Reclamation".

A certified copy shall be sent to the board and no major changes can be made thereafter without approval of the Commission. (Section 12.)

The Commission shall then submit a final report to the court. (Section 13.)

Bonds cannot be confirmed by the court until this final report is filed. (Section 13.)

Initiation and Confirmation of the Bond Issue.

Before bonds can be issued a petition (Section 35) must be circulated and signed asking the board to authorize the issue. (Section 14.)

Said petition must be addressed to the board of directors, state the amonut of the issue and the purpose for which it is to be used.

The signatures must be verified by affidavit and the signers must represent a majority in acreage and number of owners within the district. (Section 14.)

The board shall pass a resolution authorizing the issue and fixing the amount of the assessment to cover the cost of principal and interest. (Section 14.)

Within ten days the directors shall file a petition in the district court to determine the validity and confirmation of their proceedings. (Section 15.)

The court shall fix a time of hearing and give notice of the same by advertising in the local newspapers. (Section 15.)

Any interested person may appear and enter protest to the granting of the petition. (Section 15.)

The judge shall examine all proceedings and may or may not confirm all or a part of the proceedings and enter a decree accordingly. (Section 15.)

If appeal is not made to the Supreme Court within 30 days, the decree is binding and can never be questioned again. (Section 15.)

The Bonds.

The bonds will be numbered consecutively and they will mature serially in approximately equal amounts. (Section 16.)

They shall be issued for not less than 10 years nor more than 40 years. (Section 16.)

Interest on the bonds shall not exceed 6% and shall be payable semi-annually. (Section 16.)

The issue shall be made large enough to pay the first three years' interest on the bonds. (Section 16.) In this way the farmer will have no interest to pay for the first three years.

If the bonds are to run more than 20 years assessments need not be made for the sinking fund until the 20th year prior to maturity. (Section 21.) That means that if the bonds are for a term of say 30 years, the farmer will have ten years of grace before he begins paying them off.

All bond issues are made a lien on all the lands within the district, whether the lands are irrigable or not (Section 18) but assessments to pay off the bonds and interest will be levied on only the irrigable area. (Section 21.)

Certification of Bonds.

The Public Service Commission shall certify the bonds as a legal investment for all trust funds, insurance companies, banks, bonding companies, school funds, county, city or municipal funds, and the bonds will be accepted as security for deposits of public money held in banks. (Section 16.)

All bonds shall be registered by both the county treasurer and the Public Service Commission. (Section 16.)

Sale of Bonds.

Before any bonds can be sold, the directors must pass a resolution authorizing the sale. (Section 17.)

They shall then call for bids on the sale of the bonds. (Section 17.)

The directors may reject any or all bids. (Section 17.)

No bonds can be sold for less than 85% of their face value. (Section 17.)

The Commission will offer every assistance in helping to sell the bonds. (Section 17.) It will furnish addresses of, and mail notices to, every reputable bonding house in the United States, give news items to engineering and investment publications and generally render every possible assistance.

The directors need not sell the entire bond issue at one time but may sell it in blocks from time to time as the money is needed. (Section 17.)

All bond sales must be approved by the Commission. (Section 17.)

Any bonds authorized, but not sold or needed may be cancelled. (Section 17.)

The proceeds from the bond sales shall be paid to the county treasurer to be credited to the irrigation district. (Section 19.)

Letting the Contract for Construction Work.

The board of directors shall advertise for bids for the construction work. (Section 20.)

They may reject any or all bids and readvertise or superintend the work themselves. (Section 20.)

The successful contractor shall give a bond for not less than 50% of his total bid price. (Section 20.)

The contractor will be paid in warrants drawn on the cash funds received from the sale of bonds. (Section 19) or,

He may be paid in bonds, said bonds to be accepted by the contractor at not less than 85% of their face value. (Section 17.)

Assessments.

In July of each year the directors shall levy an assessment to cover all expenses for the ensuing year. (Section 21 and 22.)

Assessments shall be levied against the irrigable area only. (Section 21.)

Any errors made in the assessment list can be remedied the following year. (Section 21.)

If the directors fail to make the levy then the Public Service Commission shall do it. (Section 21.)

Copies of the assessment list must be sent to the county clerk, then the county treasurer makes the collection and credits the money to the various irrigation district funds. (Section 21.)

The directors may incur expenses for incidentals and emergencies. For this purpose they can issue warrants (bearing not over 6% interest) up to an amount equal to an assessment of 50c per acre per year. (Section 23.)

Collection and Disbursement of Money.

The county treasurer is the custodian of all funds. (Section 21.)

He shall pay the irrigation district warrants when presented for payment. (Section 19).

He shall pay the interest on the bonds when due and pay off the bonds as they mature. (Section 16).

The directors may invest any moneys on hand in any good securities until needed to pay accounts. (Section 21.)

If any money remains in the construction fund after the work is completed, it may be used to purchase outstanding bonds against the district. (Section 33.)

Default of Payments.

If a land owner fails to pay his assessments his property can be sold for taxes the same as for any county or state delinquent taxes. (Section 27.)

Interest at the rate of 1 per cent per month will be charged on delinquent payments until redeemed. (Section 27.)

If the district defaults in the payment of bonds when due, the bond holder (upon order of the court) can take possession and operate the system until the amount due is paid. (Section 18.)

Audit of Books.

All books and records of the district are subject to examination at any time by the auditor of the Public Service Commission. (Section 36.)

The State Bank Examiner shall audit the books and accounts the same as those of any county officer. (Section 36.)

Lands Having Water Rights Can Be Included.

An owner having water rights can be included in the district upon his written consent. (Sections 6 and 60.)

An area of more than 10,000 acres having water rights and already served by an irrigation system may be included within the district, at the discretion of the court, if a majority both in acreage and in number of owners of such lands petition (Section 35) the court to be included. (Section 6.)

If the district is formed to co-operate with the United States then the court may include lands having water rights. (Section 6.)

Whenever lands already having water rights are included in a district, the lands cannot be assessed for the payment of bonds or interest, but can be assessed only for the cost of annual operation and maintenance. (Sections 18, 21 and 63.)

The bonds are not a lien on lands of the district having old water rights. (Section 18.)

Election of Directors.

The directors appointed by the court shall hold office until the third Saturday in April following (Section 7) when their successors shall take office. (Section 38.)

Elections are to be held on the first Saturday in April. (Section 38.)

If the district is divided into three divisions, the three men elected shall hold office for 1, 2 and 3 years respectively; if five divisions, the two additional officers shall hold office 2 and 3 years, respectively, and if seven divisions, the additional two officers shall hold office for 2 and 3 years respectively. (Section 38.)

The term of office for each elector thereafter shall be three years. (Section 38.)

Members of the entire irrigation district can vote on all electors. (Section 38.)

The board shall give notice of elections by posting notices at least 15 days. (Section 40.)

Those entitled to vote must be land owners, qualified electors under the school laws, guardians, administrators, or executors living in the state, or agents of domestic corporations. (Section 46.)

One vote can be cast for each irrigable 40 acres or fraction thereof, but if the irrigable acreage is not de-

terminated, one vote can be cast for each 40 acres in the district. (Section 46.)

Nominations can be made by five land owners signing and filing a petition 10 days before election. (Section 47.)

Any issue can be voted upon at general or special elections. (Section 48.)

Exclusion.

Lands that cannot be irrigated economically by the works, may be excluded from the district. (Section 50.)

A majority of owners and acreage must file a petition (Section 35) with the court asking to be excluded. (Section 50.)

The petition must include a map of the exclusions and a bond guaranteeing all costs if the petition is denied. (Section 50.)

The court will set a date of hearing and give 30 days notice in a local newspaper. (Section 50.)

The clerk must mail notices to all non-resident land owners. (Section 50.)

At the hearing any owner can appear to protest or offer testimony. (Section 50.)

The court may grant the petition all or in part. (Section 50.)

Appeal can be made to the Supreme Court within 60 days. (Section 50.)

Extension of Boundaries.

The boundaries of a district may be extended at any time to take in other lands provided a petition be filed with the court asking for the extension. (Section 51.)

Said petition (Section 35) shall represent two thirds of the acreage of the total lands proposed to be included. (Section 51.)

The court shall set a date for hearing and give at least two weeks' notice by publication in a local newspaper. (Section 51.)

Any interested land owner can appear at the hearing and enter protest or offer testimony. (Section 51.)

An appeal can be made to the Supreme Court within ten days after the decree is filed. (Section 51.)

If additional lands are included in the district by extension of the boundaries the court will fix the terms upon which they are to be included. (Section 51.)

Dissolution of any District.

An irrigation district may be dissolved for good cause shown, provided there is no outstanding indebtedness against the district. (Section 67.)

A petition (Section 35) asking for the dissolution shall be signed by as many owners as signed the original petition asking for the creation of the district and filed with the court. (Section 67.)

The court will set a date of hearing and give notice by publication in a local newspaper. (Section 67.)

Any owner may appear at the hearing and give testimony. (Section 67.)

If the court sees fit a decree will be entered dissolving the district. (Section 67.)

Districts Previously Organized May come Under the Commission.

Districts previously organized under other irrigation district laws may at any time come under the jurisdiction of the Public Service Commission by filing with the clerk of the court a written election and consent signed by a majority of the land owners and representing a majority of the acreage included in the district. (Section 72.)

Such districts will thereafter be governed by the provisions of the new irrigation district law (Chapter 153 Laws, 1921) in the same manner as if originally created under said act. (Section 72.)

This action will not invalidate any of the former proceedings, bond issues or contracts. (Section 72.)

State Lands.

The State Land Board has the power to sign petitions for the inclusion of state lands within an irrigation district. (Section 62.)

Assessments against said lands are to be paid out of Legislative appropriations made for such purposes. (Section 62.)

Whenever rights of way are needed across any state lands for canals, ditches, etc., for the district the state shall give the same free of cost. (Section 52.)

Distribution, Lease and Sale of Water.

The board shall apportion the water in an equitable manner along the lands of the district. (Section 58.)

If there is a surplus of water the board may sell the same for the benefit of the district. (Section 59.)

If there is a shortage of water the board shall reduce the supply to each tract proportionately. (Section 59.)

The board may lease all or part of the works or water of the system upon written consent of a majority of the owners and acreage. (Section 54.)

Two weeks' notice of such action shall be given by publication in a local newspaper. (Section 54.)

The lessee shall give a good and sufficient bond. (Section 54.)

The water is appurtenant to the land and goes with any transfer of title whether so stated in the deed or not. (Section 29.)

The owner may assign or sell his share of water for one season only. (Section 58.)

Whenever the canal crosses streams, the district may divert such water and supply a like amount from the system to the water users of the stream. (Section 61.)

The district has the right to lease, sell or use any excess water from such streams. (Section 61.)

Power and Pumping.

A district may generate power for pumping water for irrigation or for domestic and lighting purposes within the district. (Section 64.)

The district may contract for purchase of power for pumping. (Section 64.)

The Public Service Commission shall have control of the power rates charged for this purpose. (Section 64.)

When pumping is done to different lifts, the Public Service Commission shall apportion the operating costs therefor as may seem the most equitable. (Section 65.)

Expenses of the Commission to be Paid.

All expenses of the Public Service Commission (except engineers' salaries) in connection with the organization of districts or the issuance of bonds shall be paid by the district in warrants drawn against the funds derived from the sale of bonds. (Sections 4 and 69.)

Duties of the Public Service Commission.

It shall be the duty of the Public Service Commission to do all things necessary for the development of irrigation within the state. (Section 2.)

It shall encourage and assist in the irrigation of arid lands and collect all possible data pertaining to the water resources in the state. (Section 3.)

It may employ attorneys and engineers to give advice and make examinations and surveys of water supplies and areas that may be irrigated. (Sections 2, 70 and 71.)

It shall make preliminary examinations for the organization of irrigation districts.

It shall encourage and assist in the organization and management of irrigation districts. (Sections 2 and 72.)

It shall co-operate with county officers and agencies for collecting data and encouraging the organization of irrigation districts. (Section 3.)

It is authorized to aid districts which are organizing for the purpose of seeking financial aid from the U. S. Government. (Section 3.)

It shall make a preliminary survey and report on the cost and feasibility of proposed districts prior to creating the districts. (Section 4.)

It shall approve the contracts for engineering services of the districts. (Section 11.)

It shall approve the engineering plans of reclamation and submit a final report on the advisability of carrying out the plans. (Section 13.)

It shall approve all contracts for the construction of new works or the purchase of old works. (Section 2.)

It shall supervise the letting of contracts. (Section 2.)

It shall approve all purchases or contracts made in excess of \$2,500. (Sections 2 and 12.)

It may appropriate water rights for the use of any district. (Section 2.)

It may exercise the power of eminent domain in acquiring property and rights. (Section 2.)

It shall help and assist in the confirmation and sale of all bonds. (Sections 2, 13 and 17.)

It shall certify all bond issues. (Section 16.)

It shall keep a register of all bonds of the districts. (Section 16.)

It shall certify all levies of assessments. (Sections 21, 22 and 24.)

It may examine (through its auditor) the books and records of districts at any time. (Section 36.)

It shall have control of all power rates charged for pumping. (Section 64.)

It shall make an equitable apportionment of pumping costs. (Section 64.)

Irrigation Districts Supervised by the Public Service Commission.

Following is a list of the districts that have elected to come under the jurisdiction of the Public Service Commission:

Irrig. No.	Dist. Name	County	Gross Acreage	System	Source of Water Supply
1	Cooper's Lake.....	Powell	20,000	Storage.....	N. Fork Blackfoot River.
2	Nine Mile Prairie	Missoula	9,000	Gravity.....	Blackfoot River
3	Frenchtown Valley	Missoula	8,000	Gravity.....	Clark's Fork Columbia
4	De Smet.....	Missoula	5,712	Pumping (electric).....	Clark's Fork Columbia
5	Glendive	Dawson	34,440	Pumping (steam).....	Yellowstone River
6	Brockway	McCone	3,253	Storage.....	Duck & Ash Creeks & Red Water River
7	Valley View.....	Broad-water	6,560	Pumping (electric).....	Jefferson River
8	East Bench.....	Beaver-head	22,700	Storage & gravity.....	Grasshopper Creek & Beaverhead River
9	Harlowton-Du Rand.....	Wheat-land	32,845	Storage & gravity.....	Musselshell River
10	Red Lodge-Rosebud	Carbon	32,000	Gravity.....	East Rosebud River
11	Joliet & White Horse Bench.....	Carbon	13,000	Storage & gravity.....	Rock Creek or East Rosebud River
12	Newlan Creek.....	Meagher	1,290	Storage & gravity.....	Newlan Creek, Sheep Creek
13	Wood's Gulch.....	Meagher	1,100	Storage.....	Little Birch & Wood's Gulch Creeks
14	Meadow Farm.....	Gallatin	1,037	Gravity.....	Jefferson River
15	Upper Glendive-Fallon	Dawson	6,120	Pumping (steam).....	Yellowstone River
16	*Crow Creek.....	Broad-water	52,273	Storage & gravity.....	Crow Creek, Big Hole & Jefferson Rivers
17	Brockway Ash Creek	McCone	237	Storage.....	Ash Creek
18	South Bench.....	Gallatin	20,717	Storage.....	Willow & Norwegian Creeks
19	Silver	Lewis & Clark	15,160	Storage.....	Little Prickly Pear & Canyon Creeks
20	Brackett Creek.....	Park	32,320	Storage.....	Brackett Creek
Total			317,761		
Area counted twice.....			6,357		
Total gross area in the districts.....			311,407		

*Crow Creek district did not elect to come under the Commission but petitioned for an investigation of feasibility and cost.

Field Examinations of Irrigation Possibilities.

During the past year numerous requests have been filed with the Commission asking for the services of our engineers in helping to determine the irrigation possibilities in various localities and also to assist in initiating the organiza-

tion of districts. The expense of these investigations (except the engineer's salary) from Helena and return have been borne in each case by the local people making the request.

Districts which have formally petitioned the courts, and which demand our attention have had preference over these preliminary investigations, but up to the present time we have complied with all such requests.

A brief summary of the irrigable areas or proposed irrigation districts investigated by this method during the past year follows:

Big Coulee Project. Golden Valley County.

Big Coulee is a wide flat water course heading in the Cayuse Hills in the northeastern corner of Sweet Grass County and coursing in a northeasterly direction to its confluence with the Musselshell river at Lavina. The elevation of the head waters is comparatively low (about 5,200 feet) and the drainage area limited, so that the only water supply that can be depended upon within its own water shed is the storage of the spring runoff and freshets from summer storms.

It would be possible to divert water from Sweet Grass Creek into the head of the Big Coulee water shed by a long diversion canal.

Several possible reservoir sites were inspected along Big Coulee and it is quite possible some of these may prove to be economically feasible.

The land proposed to be irrigated is a long narrow strip of flat bottom land situated on both sides of the water course. The soil is a deep clay loam that should produce well under irrigation.

The main diversion canals and laterals could be easily constructed. There are no physical or engineering difficulties to be encountered, outside of the reservoirs and dams. The limitations in the development of the project are the uncertainty of the water supply and the cost per acre.

The investigation was made in September, 1921.

Boulder Project. Jefferson County.

This project contemplates the irrigation of large areas of land along Boulder River between Boulder and Cardwell, by utilizing the flood water of Boulder River and its tributaries. Several prospective reservoir sites were investigated, six of which were found to be sufficiently favorable to warrant further investigation. These range in size from 500 to 10,000 acre-feet and in cost from \$12.00 to \$40.00 per acre foot.

The water supply is more than ample for the required storage as well as for direct flow during the fore part of

the irrigating season. The necessary canal construction will involve no serious difficulties and be relatively cheap. The irrigable area will be about 8,000 to 10,000 acres.

The investigation was made in June 1921, and it is expected that a petition for the creation of this district will be filed in the near future.

Brackett Creek Project. Park County.

Brackett Creek is a live mountain stream heading at a high altitude (9,000 feet) in the Bridger Mountains and coursing easterly to its confluence with Shields river below Clyde Park. It is proposed to store the flood waters for irrigation.

After the preliminary trip over this project, a formal petition was presented to the court asking for the creation of a district under the jurisdiction of the Public Service Commission. The field investigation of the feasibility and cost of the project is now being made and the details of the project are more fully discussed under "The Brackett Creek Irrigation District." Project No. 20, elsewhere in this report.

Crazy Woman's Pocket. Golden Valley County.

The area known as Crazy Woman's Pocket is a wide flat basin located about 8 to 10 miles northeast of Franklin. There is very little or practically no drainage area into the basin but it is possible to divert the flood waters of Swimming Woman and Careless Creeks into a large depression at the upper end of the pocket which would serve as a good reservoir. Swimming Woman and Careless Creeks both head on the southern slope of the Big Snowy Mountains and course south to Roberts Creek which empties into the Musselshell River five miles below Ryegate.

The total drainage area thus made tributary to the reservoir site would be in the neighborhood of 100 square miles. All the normal flow of the two streams is appropriated and used during the summer so that the storage of flood water would have to be depended upon entirely. Stream gauging records have been kept for the past year on the two streams but aside from these records no other data are available on the water supply.

The reservoir site is a natural depression which would need little or no dam or dyke. A long deep cut or tunnel would have to be built to form an outlet. No difficult physical or engineering features would be involved.

The irrigable area is flat, with a good drainage for irrigation. The soil is a deep clay loam, free from trees, brush, stumps or stones.

The investigation was made in September, 1921.

Swimming Woman Creek.

The source of water supply and the diversion system for this project would be practically the same as the Crazy Woman's Pocket project, the chief difference being in the areas to be irrigated.

The irrigable area lies just east of Swimming Woman Creek and around the postoffice of Rothimay. Due to its location this land is more logically entitled to the water supply than the Woman's Pocket project but the difficulty is in finding suitable reservoir sites for storage.

Several suggested sites were investigated but none of them proved to be feasible.

The land is a large flat area with a good drainage for irrigation. The soil is a sandy clay loam with considerable gravel. The area is free from rocks, stumps or trees.

The investigation was made in September, 1921.

Fall Creek. Park County.

Fall Creek rises at an elevation of 7,200 feet in the southern end of the Crazy Mountains and courses southwesterly to its confluence with the Shields river near Chadburn. The water course is practically dry in the summer time so that storage of flood waters will have to be depended upon for an irrigation supply.

A reservoir site located in Section 7, Township 1 North, Range 11 East, will economically store about 8,000 acre-feet but a supply canal would have to be constructed from Rock Creek to divert the required amount of water into the reservoir.

The reservoir capacity should be sufficient to irrigate about 3,500 acres. In less than a half mile below the dam-site the creek bottom opens out into a wide, somewhat rolling, valley free from timber or brush. The soil is a sandy loam and should be very productive under irrigation.

The area of the project will be limited by the water supply and the storage capacity of the reservoir. A petition is being prepared to create this project into an irrigation district.

The investigation was made in October, 1921.

Fish Creek. Golden Valley County.

Fish Creek rises in the Cayuse Hills in the northeastern corner of Sweet Grass County and courses in a northeasterly direction to its confluence with the Musselshell river below Ryegate. The stream has a small run off throughout the summer which is used by old rights so any additional irrigation will have to depend upon the storage of spring floods and summer freshets.

The proposed reservoir site is located in the northeast corner of Township 5 North, Range 17 East. The Fish Creek drainage area tributary to the reservoir site is 185 square miles. A long earth-fill dam with a maximum height of 50 feet will be required.

If the water supply does not prove sufficeint it will be possible to divert water from Sweet Grass Creek through a diversion canal some 15 miles long.

The land proposed to be irrigated lies on the benches on both sides of Fish Creek below the dam site. The main canals and laterals will be a gravity distribution system.

A meeting was held at the school house in the neighborhood on the evening of September 30th, to discuss the organization of a district, and it was decided to proceed with petitions. The work of securing signers has progressed quite rapidly and the Commission is advised that the petitions are about ready to be filed. Approximately 25,000 acres are proposed within the district, but the irrigable acreage will ultimately be cut down to the limits of the water supply and the reservoir capacity.

The preliminary investigation was made in September, 1921.

Franklin Project. Golden Valley County.

This project lies north of the Musselshell river and extends from Barker to Slayton. It is proposed to divert the flood waters of Musselshell river into Dead Man's Basin through a diversion canal some 12 to 15 miles long. The basin is a natural reservoir site which will not require a dam. A short tunnel will be required for an outlet. The capacity of the reservoir will be limited to the available water supply.

This project was originally withdrawn under the Carey Act, then released and was later promoted as an irrigation district, under the 1909 law, but failed to materialize. Quite extensive surveys have been made and considerable data are available.

The land proposed to be irrigated is slightly rolling and free from stumps, timber or rocks. The soil is a clay loam mostly covered with sagebrush. The area susceptible of irrigation will be limited to the water supply.

Petitions are now being circulated to organize an irrigation district under the jurisdiction of the Commission and from recent advise it is expected this petition will soon be filed.

The preliminary examination was made in September, 1921.

Newlan Creek. Meagher County.

This project has petitioned as an irrigation district under the jurisdiction of the Public Service Commission. The first preliminary investigation was made and is described below in detail as project No. 12.

The preliminary investigation was made in December, 1920.

Prickly Pear. Jefferson County.

This project is located along Prickly Pear Valley just southeast of Helena. All the normal flow of the creek is adjudicated and used by the old rights. It is proposed to divert water out of the stream and tributaries in the early spring onto the surrounding slopes for ground storage. It is claimed that later in the summer when the normal flow is low, the water so stored will begin to find its way back to the creek channel and thus increase the natural flow above the normal. The farmers interested in this scheme are those who have late rights and their contention is that if they can supplement the normal flow for the old rights below, in this way, they should be entitled to divert a like amount out of the streams during the irrigating season.

The first question involved in such a scheme is to determine the natural flow of the streams before underground storage is practiced and then such data will form a basis for estimating how much the flow can be increased by underground storage. Stream gauging stations have been placed along the creeks for determining the information needed.

The diversion canals will be short and not expensive.

The investigation was made in June, 1920.

Rock Creek. Park County.

Rock Creek heads at an altitude of 10,000 feet at the southern end of the Crazy Mountains and courses southwesterly to its confluence with the Shields river at Clyde Park. The stream has a good drainage area and the flow is quite dependable throughout the summer. The water rights have been adjudicated and it often happens that the shortage during the summer months deprives the later rights of water.

It was proposed under this scheme to create a reservoir on the creek located in Section 9, Township 2 North, Range 11 East, to store flood waters which could be used to supplement the normal flow during the summer.

Similar to many other reservoir sites we have been called upon to look over, there was a fairly good dam site, and a

large flat basin above, but the slope of the basin (about 200 feet per mile) was too great to afford any storage capacity.

The field investigation was made in October, 1921.

Marias Project. Hill and Choteau Counties.

This project includes about 300,000 acres of land lying southwest of Havre. This scheme was formerly promoted as two separate projects, one covering about 50,000 acres of land around Brinkman, and formerly called the "Brinkman Project" and the other known as the "Lonesome Lake"—for storage purposes.

The land lies well for irrigation, the soil is fertile and the altitude and climatic conditions are favorable for crops, but the construction cost will be high. Further steps toward the creation of this district were delayed, awaiting improvement in the financial situation.

Other Requests.

Besides receiving application for examinations of proposed irrigation districts or irrigable areas, the Commission has been flooded with various miscellaneous requests for advice and information on irrigation matters.

Many requests have been received for copies of the law governing the creation of irrigation districts; a few inquiries have been received from bond buyers who are interested in Montana Irrigation Bonds, and inquiries have been received concerning reservoir sites, damming navigable streams, the construction of fish traps in irrigation ditches and dams, irrigation by pumping, use of various kinds of power, securing a water supply from artesian wells, the installation of hydraulic rams and wind mills, the procedure necessary to create an irrigation district and bringing districts already created under the jurisdiction of the Public Service Commission.

Legal advice has been requested on water rights, water decrees, posting water right notices, converting water from one water shed to another, assisting irrigation district attorneys in the creation and organization of districts and advising land owners on various questions in connection with their personal rights as related to irrigation districts. A brief summary of a few of these requests are:

Calabar Paragon Irrigation District. Plans and an engineering report have been submitted on a pumping scheme located along the north side of the Yellowstone River above Miles City. They propose the irrigation of 7,000 acres, by pumping to two lifts 12 and 35 feet using steam power generated by coal.

Irrigation Near Edgar. This project proposes the irrigation of about 1,000 acres near Edgar by pumping with electric power. Two lifts are proposed one to be 170 feet and the other 250 feet.

Missouri River Project. This project proposed building a dam in the Missouri River below Lombard to divert water on both sides of the river for irrigating several thousand acres in Helena Valley. It is also proposed to install a hydro-electric plant to generate power for pumping.

Tally Lake Irrigation District. This project is located in Flathead County and proposes to create a storage reservoir of Tally Lake for the irrigation of 5,500 acres.

Deep Creek. This project located in Teton County proposed to reservoir a tributary of Deep Creek known as Battle Creek, for the irrigation of lands below.

Nine Mile Prairie. This is a private pumping scheme located on Nine Mile Prairie in Missoula County. A twenty foot fall can be obtained for pumping or operating a hydraulic ram. The lift is 102 feet and the area proposed to be irrigated is 300 acres.

Poplar River. This project, located near Scoby, has already built a system of canals and laterals to cover about 1,800 acres. The direct flow of the river is used, diverted by a temporary dam, which has been rebuilt nearly every year. A district is proposed to install a permanent concrete diversion weir.

Superior. This project proposed the irrigation of about 3,000 acres from Quartz Creek located in Mineral County.

Artesian Wells. Inquiries have come to the Commission asking about the possibilities of developing artesian wells for irrigation both near East Helena and near Dead Man's Basin in Golden Valley County.

Cost of Making Examinations and Reports.

Before making the field examinations of projects, which have petitioned the court for organization, the Commission according to law, requests the petitioners to make a deposit to cover the necessary expenses. Such expenses include transportation, board and lodging, incidentals and salaries of assistants, but not the engineer's salary. Every claim presented against this account is audited by the Commission before payment is made, and every effort is being used to keep these expenses within a reasonable limit.

The following table shows the total cost and the cost per acre for the investigations made on all the projects coming before this Commission.

Irrigation District	Gross acres	Am't Deposit	Cost		Date of Refund
			Total	Per Acre	
1. Cooper's Lake	20,000	\$.....	\$.....	\$.....	
2. Nine Mile Prairie.....	9,000	.....	.....	.....	
3. Frenchtown Valley	8,000	.....	.....	.....	
4. Desmet	5,712	300	202.11	0.035	Aug. 5, 1920
5. Glendive-Fallon (1).....	34,440	1,400	1,309.95	0.038	Aug. 31, 1920
6. Brockway	3,253	600	276.35	0.085	Oct. 22, 1920
7. Valley View	6,560	300	284.64	0.043	
8. East Bench	22,700	400	324.29	0.014	
9. Harlowton-Durand	32,845	600	502.98	0.015	Feb. 5, 1921
10. Red Lodge-Rosebud.....	32,000	800	606.46	0.019	
11. Joliet & White Horse Bench	13,000	800	362.11	0.028	May 31, 1921
12. Newlan Creek	1,290	.....	.....	.....	
13. Wood's Gulch (2).....	1,100	50	20.77	0.019	Nov. 7, 1921
14. Meadow Farm	1,037	.....	.....	.....	
15. Upper Glendive-Fal- lon (1)	6,120	100	29.11	0.005	
16. Crow Creek	52,273	600	299.67	0.006	Aug. 1, 1921
17. Brockway Ash Creek....	237	.....	.....	.....	
18. South Bench	20,717	600	437.63	0.021	
19. Silver	15,160	300	300.00	0.020	
20 Brackett Creek	32,320	500	.....	.....	

(1) Part of the expense of project No. 5 is chargeable to Project No. 15, as no additional field expense was incurred in submitting the report on project No. 15.

(2) The local people arranged for transportation and living expenses, and these items were not entered as a charge against the deposit.

The size of the project, the physical conditions, transportation facilities, and available data in the nature of previous surveys, largely determine the cost of the investigation. Generally the smaller projects cost more per acre than the larger ones. The Brockway Project was the most expensive (\$0.085 per acre) which was largely on account of extra transportation expenses from the railroad to the project which is some forty miles inland, but generally the cost has ranged from two to four cents per acre.

Engineering Services—Contracts.

Up to the present time three of the districts under the jurisdiction of this Commission have signed contracts, approved by the Commission for the services of resident engineers. The three districts are the Valley View, Upper Glendive-Fallon and the Red Lodge Rosebud. Following is a resume of the terms of each of the three contracts.

Valley View Irrigation District, Project No. 7.

Date of contract, November 8, 1920.

The duties required of the engineer are formulated under two heads:

1. Preliminary engineering.
2. Construction engineering.

Under the first item the engineer is to make all surveys, plans, specifications and estimates preparatory to voting bonds for construction. This includes accurate surveys and determination of the irrigable area in each ownership, the location of all canals, power transmission lines, pumping plants and structures; figuring the capacities of all canals, flumes, siphons, etc., making accurate maps and profiles of all canal lines, etc., estimating the yardage and classification of all excavation, and the making of detailed plans for all structures and pumping equipment. Item 1 also includes the preparing of complete specifications covering every phase of the construction work and a detailed estimate of the cost of construction. The engineer is also required under this item to make all necessary surveys, maps and descriptions showing by metes and bounds all lands to be purchased for rights of way, and to furnish the district with all necessary maps, plans, profiles and drawings in sufficient quantities for use of contractors, bond buyers, etc. All plans and specifications are subject to approval by the Public Service Commission. All supplies, instruments and labor incident to this work are to be furnished by the engineer.

For the services required of the engineer under item 1, this district is to pay him in cash or marketable warrants a sum equal to 80c per acre of irrigable land in the project, partial payment to be made as the work progresses, but full payment not due until final approval of all the plans by the Public Service Commission. Said commission is also to be arbiter in case of any disagreement between the engineer and the district.

Under item 2, the engineer is to locate and stake on the ground in advance of construction all irrigation works called for in the plans and specifications. He will inspect and supervise all construction and see that the plans and

specifications are strictly complied with. He will make estimates of completed work monthly, or otherwise as provided in the contract, and certify same to the district for payment. He will test all power and pipe lines and pumping equipment to insure satisfaction before acceptance.

Under this item, the engineer is also to prepare plans to be used for assesment purposes showing by metes and bounds the irrigable acreage in each ownership. The engineer is to furnish all supplies, instruments and labor for the services required under this item. For his services under item 2, the engineer is to receive in cash 3 per cent of the actual cost of all construction and of the purchase and installation of all machinery and equipment.

The contract provides that the engineer shall give bonds to assure the faithful performance of his duties and to protect the district against any lien or claim on account of expenses incurred by him in performing such duties.

Red Lodge-Rosebud Irrigation District, Project No. 10.

Date of contract, June, 1920.

The services required of the engineer in this contract are practically the same as enumerated in the Valley View contract last above mentioned; except that no pumping machinery is to be installed, since this is a gravity system. The engineering duties are all covered in one item and not segregated as in the Valley View contract. The general provisions of the contract are the same as those of the Valley View contract with the following exceptions:

The salary of the engineer is fixed at \$10.00 per day when on office work, and \$12.00 per day on field work, and he is to provide his own board and transportation.

The district is to pay for all office and field supplies and for all labor and assistance required on the engineering work. All notes, maps, plans, drawings, etc., are to be and remain the property of the district at all times.

For negligence on the part of the engineer in the performance of his duties, the district may terminate his contract.

Upper Glendive-Fallon Irrigation District, Project No. 15.

Date of contract April, 1920.

The services required of the engineer in this contract are practically the same as outlined in the Valley View contract above mentioned, with the additional duty of examining and valuating the present pumping plant and coal property and of formulating plans for opening and operating the coal mine as fuel for the proposed pumping plant. He is also to give expert testimony in court if required.

The general provisions of this contract are similar to those of the Valley View contract with the following exceptions.

The engineer is to have only general supervision over the work, the details of which are to be performed by assistants paid by the district. He is to visit the project "from time to time" during the preliminary surveys and not less than once a month during construction.

The district is to pay for all surveyors, inspectors and other help and to furnish all supplies, instruments and maintenance expenses of the engineer while on the job and to and from his home office.

As compensation the engineer is to receive during the preliminary surveys and up until the sale of bonds the sum of \$25.00 per day and expenses while on the job or en route, all payments to be in cash or equivalent. For the entire job, both before and after bond sale, he is to receive 3 per cent of the entire cost of the project, all per diem payments made before bond sale to be included in said 3 per cent payment. During construction 25 per cent of due monthly payments is to be held out until final payment upon completion of the project.

Water Rights.

In connection with all irrigation investigations made by this Commission, the question of water rights is of vital importance. Unfortunately the water laws of Montana are very incomplete and unsatisfactory, in fact, no real irrigation code has ever been adopted, and such water laws as we have are a disconnected collection of piece-meal legislation scattered over the last 50 years of Montana's history. Many attempts have been made within the past 20 years to adopt a modern water code along the lines now in use in several other Western States, but thus far this legislation has not succeeded. Under the present system, water rights may be initiated in three different ways: (1) by beneficial use without any record whatever, (2) by posting and filing notice of appropriation, or (3) by applying to the court for supplemental rights on streams that have already been adjudicated. No provision is made for state administration of the waters nor for proper records covering all water rights.

Under such laws it becomes the duty of every water user to defend his right as against other users and therefore most cases of water dispute finally lead to court adjudication when the respective rights on a stream are determined by court decree. On streams that have been adjudicated, the court appoints a commissioner to distribute the water among the respective users. After many

years of expensive water right litigation, over half of the water rights still remain un-adjudicated. According to the United States Census report of 1920, only 42% of the irrigated area of the state is served by decreed water rights. The report also shows that 14% of the land is irrigated under rights having no record of any kind.

Records of decreed water rights are filed with the clerk of the court in each county. Other appropriations are recorded, if at all, with the county clerk and recorder. This means that there are now 108 different offices in Montana keeping records of water rights, with no uniformity in the records and no law requiring proper indexing. In Wyoming and other states having a modern water code, complete and up-to-date records of all water rights in the state are available in one central office.

The problem in Montana is still further complicated by the fact that court decrees are often entered for several times the available water supply of the stream and very often for more water than can be beneficially used. On recorded appropriations which are not decreed, the records invariably show rights many times in excess of the available supply. On one of the larger streams recently investigated by this Commission, we found officially recorded water appropriations for over fifty times the total amount of water used and over ten times the summer flow of the stream. There are also perfectly good water rights known to exist without any record whatever. This confusion of the recorded water rights in the state adds greatly to the difficulty of making irrigation investigations. In such cases it is necessary after searching all available records, to carefully study the conditions on the ground to determine what rights are actually established by beneficial use of the water.

Most of the adjudicated rights have been decreed in miner's inches, and generally on a basis of "an inch to the acre". This amount, if used for a season of 140 days, would cover the land to a depth of seven feet, which in most cases is an excessive amount of water. Such decrees encourage the waste of water, to the detriment of other appropriators and the ultimate water-logging of the land. Most decrees also permit the use of the water "at any and all times". While it is not supposed that such decreed water is to be used during the non-irrigating season, yet the fact that it may possibly be so used is a detriment to the development of reservoirs to store the flood waters of such streams.

Montana greatly needs a proper water code, such as will encourage better use of the waters of the state, without

injury to present vested rights, and with provisions for further adjudication by a board of experts rather than by the court, for administration of the waters by the state, and for a proper system of water right records.

Stream Measurements.

The importance of this work cannot be overestimated. On most of the projects investigated the principal obstacle to early development was found to be the lack of proper stream flow records. If the state had many years ago adopted the far-sighted policy of providing for proper stream measurements, irrigation development would now be much farther advanced.

Stream measurements are now made by the State Engineer's office and the U. S. Geological Survey working in co-operation. The federal government now spends about \$15,000 per year on this work and the state funds available for this work amount to about \$9,000 a year, altho the average for the past five years has been only about \$5,000 a year.

There are now 133 gauging stations being maintained in the state, and official stream flow records are also available for about 50 others that are now discontinued.

These stations are established on such streams and at such points as will give the information most likely to be needed in connection with contemplated irrigation development. At these stations stream measurements are periodically made by expert hydrographers, and daily gauge height readings are made and reported by local observers often working for little or no compensation.

Several new gauging stations have been established on recommendation of this Commission. Interested parties may have gauge stations established on any important stream by applying to the State Engineer and providing for expenses of a local gauge observer. Farmers not informed of this service have put in weirs, which cannot record extremely high or very low water and are often washed out. Also their records cannot be officially accepted.

Records of stream flow over a long period are quite necessary in planning storage reservoirs, and are of value in helping the sale of irrigation district bonds, as bond buyers always insist upon good evidence as to the sufficiency of the water supply.

The unit of measurement used in connection with stream-flow records is the second-foot or cubic-foot-per second (sometimes called "cusec.") In referring to a volume of water not in motion the acre-foot is the proper

unit. Water appropriations for direct flow should state the amount in second-feet, and filings for reservoir purposes should name the volume in acre-feet. During the early history of Montana, the miner's inch was the common unit of measure and is still quite commonly used, altho a law was passed in 1899 making the second-foot the legal unit of measure. This legal unit should always be used and the miner's inch discontinued in all mention of water measurement. One second-foot is equal to 40 Montana miner's inches.

Results of Stream Measurement.

Records of official stream measurements are available at the State Engineer's office and the Helena office of the U. S. Geological Survey. Such records showing the stream flow at all gauging stations are published annually or biennially by the United States Geological Survey and the State Engineer.

These records show that the annual run-off from the different drainage areas varies from over 44 inches in depth in the mountains of Glacier Park to less than one inch on some of the low flat plains of eastern Montana. Such records are of great value for comparison in estimating water supply where measurements have not been made.

As shown by the official stream flow records, the amount of water flowing out of Montana (being lost to this state and not needed elsewhere) is as follows:

Year	Kootenai River	Clark's Fork of Columbia	Missouri River	Yellowstone River	Total
1913	9,600,000	17,500,000	8,600,000	10,000,000	45,700,000
1914	9,100,000	12,500,000	6,100,000	10,500,000	38,200,000
1915	7,400,000	11,400,000	6,200,000	10,080,000	35,000,000
1916	12,000,000	13,500,000	8,300,000	11,000,000	44,800,000
1917	8,500,000	18,000,000	11,800,000	12,500,000	50,800,000
1918	8,400,000	17,400,000	7,700,000	12,100,000	45,600,000
1919	8,700,000	10,500,000	4,400,000	5,500,000	29,100,000
Average	9,100,000	14,400,000	7,600,000	10,200,000	41,300,000

This shows that even in 1919, the dryest year on record, enough water flowed out of Montana to irrigate ten million acres of land, or five times the total area now irrigated. From such figures, the economic loss to the state is readily apparent.

The federal irrigation census (1920) for Montana shows that the total expenditures for irrigation works within the state amounts to \$52,143,363, which is an increase of nearly \$30,000,000 since the census taken in 1910.

In this connection it is startling to note that the crop records show that from September 1919 to May 1920, which was the disastrous season of feed shortage, the value

of hay and feed concentrates shipped into the state for stock amounted to \$34,200,000. This amount represents more than has been invested in the past ten years, or approximately 66% of the total amount invested in the state for irrigation works.

Duty of Water.

In designing an irrigation system, it is very important to correctly estimate the proper duty of water. This is generally expressed in terms of acre feet per acre applied to the land by irrigation each year. The following table shows the estimated duty of water for ten of the irrigation projects under supervision of this Commission.

Irrigation Districts	Elevation	Precipitation	Duty of water (ac. ft. per ac.)
De Smet	3,200	14.91	2.50 At the pumps
Brockway	2,500	18.65	1.37 On the land
Valley View	4,200	11.29	2.00 At the pumps
East Bench	5,100	18.98	1.25 On the land
Harlowton-Du Rand....	4,100	10.84	1.25 On the land
Red Lodge-Rosebud.....	4,700	20.10	1.50 On the land
Wood's Gulch	5,000	13.01	1.25 On the land
Upper Glendive-Fallon	2,150	10.72	2.00 At the pumps
South Bench	4,500	14.31	1.25 On the land
Silver	4,100	13.30	1.75 On the land

On the U. S. Reclamation projects in Montana, records of actual duty of water have been kept for several years, as shown in the following table.

U. S. R. S Project	Average Elev. Ft.	Precipita- tion Inches	Duty Acre Feet Delivered to the Land			
			Period Yrs.	Max.	Min.	Mean
Huntley	3,000	13.51	9	1.88	0.97	1.36
Sun River	3,700	10.92	9	1.90	1.10	1.52
Lower Yellow- stone	1,900	15.00	11	1.77	0.72	1.32
Flathead	3,600	16.83	9	1.99	1.12	1.47
Milk River	2,200	13.45	9	1.28	0.67	0.86
Fort Peck	2,600	13.30	7	2.00	1.08	1.57
Blackfeet	3,850	13.08	5	1.88	0.83	1.41

Such records are of value in determining the proper duty of water to be estimated for new projects. On the average Montana project, about half of the yearly precipitation above shown falls during the growing season. This rainfall should be taken into account in comparing the duty of water on such projects with that of others where little or no rain falls in the summer months. Because of the shorter growing season in Montana, the total water requirement is less than in most other western states.

Reservoirs.

As the normal flow of our streams begins to be consumed by older rights it becomes apparent that new sources of water supply must be developed. Most of Montana's streams rise at high elevations and are fed by perpetual

snow, which characterizes them as excessive flood streams in the spring of the year. There is a large field of possibilities in Montana for the development of reservoir sites to store these flood waters for summer irrigation and it has been only recently that real development in this line has had much earnest consideration.

The last federal census (1920) shows that Montana contains 468 reservoirs having a total storage capacity of 1,571,720 acre-feet. Throughout the state there are a good many small private reservoirs constructed in dry or semi-dry coulees where spring flood water is impounded for the irrigation of garden patches or limited areas. A good many of these have been washed out or damaged by floods due to improper provisions being made for spillways. Ample spillway capacity is a very critical unit of the dam and one which receives too little consideration in constructing small private reservoirs. The spillway should be built so that water entering or leaving it would not wash the banks or the dam and its capacity should be determined from the factors controlling the intensity of floods such as the square miles of drainage area above the dam, the quantity of snowfall and the rate it melts in the spring, and the duration and intensity of rainfall during cloud bursts.

Within the past year there have been many applications filed in the office as well as verbal requests in the field for engineering inspection of proposed reservoir sites. The majority of sites inspected have not proved feasible either for the lack of sufficient water supply or an economical relation between the cost of the project and the volume of water stored. As farm conditions improve and markets develop, the land will doubtless be able to bear a heavier construction cost for storage works and this fact will develop some of these sites that may not be considered feasible now. An economical combination of irrigable land, a sufficient water supply, and a good storage site are not as easily found as might at first be supposed.

Usually the results of investigations show that a good dam site is available, and a large flat basin opens out above, but the grade down the basin is so great that a reasonable dam is not sufficient to give an economical volume of storage. The capacity must not only be large enough to supply the irrigation demands of the land, but must also take care of the losses thru seepage and evaporation which are an added cost to the undertaking.

Items entering into the costs of reservoirs, besides the cost of the dam itself, are the rights of way to be purchased, which in many cases may involve the purchase of irrigated

lands together with their water rights; expensive farm improvements flooded, such as buildings, wells, water works, etc., damages to lands adjoining the reservoir due to cutting up ownerships in such a way that tracts left remaining are practically worthless; and clearing timber or brush from the reservoir site. In the table below showing the estimated cost of reservoirs contemplated in connection with our projects, these items have been considered as parts of the storage costs.

The economical limiting cost that can be spent for storage depends on many circumstances. Considering the general conditions equal, such as markets, transportation, climate, elevation, etc., the amount that a project can stand for storage works depends upon the additional expense necessary to divert the water to the land where it is used. In the following table it will be noted that the estimated cost of storage ranges from \$7.70 to \$58.90 per acre-foot but not all of the expensive ones will prove feasible.

Proj. No.	Name Reservoir	Type Dam	Acres Flooded	Reservoir Capacity Acre Feet	Length Crest Feet	Height Feet	Cost per Acre Foot
6	Duck Creek	Earth fill	* 157	2,736	1,175	37	\$33.02
	Duck Creek	Earth fill	97	1,172	1,115	26	35.84
	Ash Creek	Earth fill	116	1,469	530	30	27.06
	Redwater	Earth fill	247	2,485	1,675	30	30.53
	Redwater	Earth fill	153	1,350	898	19	28.50
8	Grasshopper	Concrete arch	554	21,870	375	106	8.80
9	Cottonwood Cr.	Earth fill	46	1,235	500	60	26.77
	Martinsdale	Earth fill	297	4,189	2,450	50	31.52
	Two Dot	Earth fill	109	1,780	1,300	36	37.69
	Du Rand	Earth fill	695	20,000	674	130	9.27
11	Black Canyon	*	72	2,850	*	*	9.82
	Third Lake	Rock fill	47	2,100	370	40	9.80
	Rosebud	Earth fill	700	10,000	1,220	45	7.70
13	Dam and Dyke	Earth fill	191	2,528	480	52	25.56
	Two dams .....	.....	.....	.....	480	50 1/2	.....
	One Reservoir	Earth fill	194	2,448	370	36 1/2	24.89
	Two dams .....	.....	71	1,094	340	47 1/2	.....
	Two Reservoirs .....	.....	130	1,407	400	45 1/2	31.39
	Big Hole	Rock fill	1,850	50,000	540	90	9.56
	Crow Creek	Rock fill	125	7,500	830	166	58.90
18	Willow Creek	Concrete arch	1 218	32,827	500	122	11.21
	Norwegian	Earth fill	1,192	31,350	600	83	8.86

*Natural dam, water to be drawn off by tunnel.

Pumping.

The answer to the question often asked, "what is the maximum economical lift to which water can be pumped for irrigation?", is dependent upon many factors. For example, an area located twenty miles from the railroad at an elevation of 5,000 feet, where the principal crop is hay, could not afford a very high pumping charge, while on the other hand a similar project, situated near the railroad, say in the Yellowstone Valley at an elevation of 2,500 feet where high priced crops such as corn, tomatoes, garden

truck, or sugar beets are raised, could stand a relatively high maintenance cost.

Factors entering into the solution of the problem depend upon the kind of power, cost of fuel or power, elevation above sea level, distance to markets, character and value of crops raised, transportation facilities, rainfall, compactness of the land, area and length of canal, management, and many other local features.

Whether or not a pumping system will pay is an individual problem. The net returns realized from crops must pay the taxes, depreciation of farm equipment, yearly operating expenses of the pumping plant and canals, depreciation on the plant, and a fair rate of return on the amount invested.

The power rates on file with the Public Service Commission, of the Montana Power Company for irrigation are copied below for the information of those who are interested in developing this kind of a project.

Schedule "GP"—Irrigation and Short Term Power Rates.

This rate applies to power used for pumping water for irrigation or for any purpose requiring power for less than 12 months each year.

Power Charge Based on Connected Load.

1st month's service.....	\$2.50 per H. P.	7th month's service....	\$.60 per H. P.
2d month's service.....	2.00 per H. P.	8th month's service....	.55 per H. P.
3d month's service.....	1.50 per H. P.	9th month's service....	.50 per H. P.
4th month's service.....	1.25 per H. P.	10th month's service....	.45 per H. P.
5th month's service.....	1.00 per H. P.	11th month's service....	.45 per H. P.
6th month's service.....	.75 per H. P.	12th month's service....	.45 per H. P.

Kilowatt Hour Charge Based on Connected Load.

Horse-power	Rate per KWH	Horse-power	Rate per KWH
1 or less.....	\$.028	75	.0098
2	.027	100	.0087
3	.026	125	.0080
5	.025	150	.0074
7	.023	175	.0071
10	.021	200	.0068
15	.019	300	.0061
20	.017	500	.0055
25	.016	750	.0051
35	.014	1000	.0050
50	.0116	2000	.0048

If the connected load does not correspond exactly with any load listed in the table, the next smaller number of horse-power is to be used in determining the kilowatt hour rate.

The total charge under this schedule is the sum of the power charge and the kilowatt hour charge, as above.

The first month's service each year will be reckoned from the date upon which power is first received to the

corresponding day of the following month, and so on for each succeeding month's service.

The power charge for the final month of service each year will be pro-rated if service is received for less than a full month.

Feasibility of Project.

Not all of the projects that have been investigated by the Commission have been recommended to the court as advisable or suitable districts to create. Some have proven feasible for any part of the area while others were not feasible in their entirety. In each case the court has been advised of the findings of the Commission and these findings gave the land owners a substantial basis for further proceedings at a minimum expense.

The question of the feasibility of these projects may be divided under two main headings. The project may be possible from an engineering or physical stand point. That is, no unusual problems are involved in building the system; the water supply is ample and the land is productive, but,

1st. The project may not be feasible from an economic stand point. That is, the character of crops raised and the net returns of irrigated land will not warrant the necessary expenditure for irrigation works, and,

2nd. The project may be feasible but not bondable. That is, the project may be physically and economically feasible but still it cannot be bonded for the full cost of construction. For example, suppose dry land now worth \$15.00 per acre could be irrigated at a cost of \$50.00 per acre and then be worth \$90.00 per acre when irrigated. Such a proposition would seem to be economically feasible yet it would be difficult, if not impossible to bond the land for \$50.00 per acre. Such bonds would depend mainly for their security upon a value not yet created and the bond buyer would hesitate taking the risk. The solution of this case would seem to be to construct all or a part of the system by a mutual company or otherwise and then create an irrigation district to bond itself and take over the system.

The detailed questions which enter into the feasibility of any project are sufficiency of the water supply, character of soil and topography, altitude, climatic conditions, length of growing season, crops and yields, nearness to and demands of markets, transportation facilities, colonization, the costs of construction and yearly maintenance and whether or not the investment would be a profitable undertaking.

The most important point, and strange as it may seem the one very often not fully considered, is the question of a sufficient water supply. Herein comes the necessity of having reliable data on the stream-flows derived from actual stream measurements. The lack of such information has thrown doubt on the feasibility of several of our projects. Personal observation of certain streams extending over a period of years may be convincing evidence to one living in a locality that the water supply is sufficient but without such information in some definite, concrete figures, there exists no sound basis upon which to place a value on the available water or finance on irrigation undertaking.

This question is even more serious on a project contemplating storage than on a gravity system because in addition to the question of the water supply, the question of costs are involved. Unless the water is decidedly in excess of the required amount needed for storage, reservoirs must be made large enough to carry water over from wet years to dry ones. On some of our investigations where these data have been lacking and the estimated cost of the project is approaching the economical limit, a serious question of costs may be involved in providing additional storage capacity to insure a water supply for dry years which might make the entire project unfeasible.

The altitude, climate, soil and topography play an important part in gross crop returns and ultimately the financial returns from the investment in irrigation works. If the altitude is comparatively high with a short growing season, and cool summer nights that retard the germination of seeds and roots, then the variety of crops will be very limited, but on the other hand where reverse conditions exist a larger variety of crops can be raised and the returns will be greater.

Colonization, transportation facilities and markets have a definite bearing upon the ultimate success of the project. The more intensely an area is colonized the better the land will be farmed and the greater the gross returns will be from the given area. Besides this there are many economic advantages to be gained such as improving the highways, telephone service, railroad accommodations, and adjacent town advantages in the way of amusements, banks, schools, churches, etc. The question of colonization is going to be a vital factor in successfully developing most of Montana's future projects.

Colonization.

Of vital importance to all irrigation projects is the question of colonization. Many feasible projects have partially or wholly failed for lack of proper colonization

after the irrigation works were constructed. A large percentage of Montana land for which water is now available is not being farmed at all or only partially farmed because the owner is attempting to hold more land than he can properly care for. Large holdings may be permissible on dry farming or grazing land, but under irrigation, smaller holdings, closer settlement and more intensive cultivation are absolutely necessary to success.

Most of the irrigation districts recently organized in Montana are in sections that have been dry farmed for several years and the average holding is usually quite large. On a few projects investigated by this Commission the gross acreage per owner is as follows:

District	Maximum	Minimum	Average
Valley View	320	40	170
Red Lodge-Rosebud	880	40	272
Crow Creek	4,400	40	329
South Bench	2,800	40	404

This shows an average holding for these projects of 294 acres.

On the same four projects 62% of the gross area is actually irrigable. This would give an average irrigable area per owner of 182 acres.

It is generally agreed by those who have made a special study of this problem in Montana that the proper sized farm unit under irrigation in this state is from 60 to 100 acres, depending on the location and kind of crops grown.

It is therefore quite evident that on all new irrigation projects many new settlers must be brought in, so that all the land may be properly cultivated and every acre made to produce, in order to pay off the heavy cost of the irrigation system. These new settlers must be carefully selected and must include only such as are properly qualified and sufficiently equipped and financed to make a success.

Expert advice and guidance must be given these new settlers in getting started on the land, and above all they must be protected against unscrupulous promoters such as have caused the ultimate failure of many colonization schemes in the past.

In California the state through its Land Settlement Board is now conducting a colonization system along the lines above suggested and is meeting with most gratifying success.

Proper colonization of our irrigated lands, will greatly increase the population, bring new industries and better

roads and schools, stabilize business in the towns and insure the success of the project and the general prosperity of the community.

Revision of Old Irrigation Systems.

There is one large field for irrigation development in Montana, which thus far has been almost overlooked. We refer to the great saving of water and consequent extension of irrigation which would be possible by revising irrigation systems in old irrigated sections. In most cases the original construction followed gradually without any definite planning of the entire system. The result was many more or less conflicting systems with canals often paralleling each other, cutting up the land in a bad way causing a great loss of water through seepage and evaporation, most of which could be saved by having one large canal take the place of several smaller ones. The Gallatin Valley is a good example of such a section. Here there are many paralleling canals and here also, because of the gravelly nature of the soil, seepage losses are very heavy. In connection with the adjudication of the West Gallatin River several years ago, it developed that the average seepage loss in the canals of this valley was four per cent per mile. There is also a heavy loss of water in the porous creek-bed during the low water season, which could be saved by a revision of the present system. This entire valley could be organized as an irrigation district and all of the present irrigated lands served by a revised system, in which the loss would be only a small part of the present waste, and in this way the available water supply could be made to serve a much larger area, and do it more efficiently. The cost would be relatively light and, because of the high present value of land and improvements, the district would have no difficulty in selling bonds for such an undertaking. There are many other districts in the state where the same conditions exist and where the same solution is applicable.

Concrete Canal Lining.

Heavy loss of water in canals may often be prevented by lining the canal with concrete or other water tight lining. Though in most cases this method is too expensive to be considered, yet there are many cases where the cost of lining is justified. In many cases, the water lost through seepage in short stretches of the canal would be of more value than the cost of lining such porous sections. An additional saving is effected by the fact that because of the much greater velocity in lined canals a much smaller

cross section is possible and consequently the cost of excavation is greatly reduced. This will partly off-set the extra cost of lining.

On the West Gallatin river, it is officially reported that during the dry season of 1919, 25 second feet of water were turned down the river bed in order to supply 2.5 second feet to a user 5 miles below, nine tenths of the flow being lost in seepage and evaporation. It is now being proposed to build a concrete lined ditch to carry the river at this point. Because of the steep grade and very high velocity, a small concrete lined channel would carry the entire river during the late summer, and thus save the heavy seepage loss now occurring in the stream bed. There are many cases where water now lost in the stream bed could be saved in this manner.

Complete List of all Irrigation Districts in the State.

The following table gives a complete list of all irrigation districts in the state by counties. The list was compiled from questionnaires sent to all clerks of the several district courts. In some cases the areas given are gross areas while in others they represent the net irrigable areas.

COUNTY	Name of Irrigation Dist.	Gross Acreage	Date Created	Name and Address of Secretary	Bonds Authorized and Date	Remarks
Beaverhead	Big Hole	9,521.99	Aug. 12, 1916	B. R. Stevenson Wisdom	Aug. 12, 1916	Bonds sold \$140,000
Blaine	*East Bench	22,700	Pending		Not Authorized	
	Paradise Valley	11,548	Apr. 1, 1920	A. W. Ziebarth Chinook	Not Authorized	
	Alfalfa Valley	4,050	June 19, 1920	R. H. Clarkson Chinook	Not Authorized	
	Fort Belknap	9,000	Nov. 8, 1920	L. V. Bogy Chinook	Not Authorized	
Broadwater	Zurich	12,217	Dec. 27, 1920	E. E. Shellenberger Zurich	Not Authorized	
	Crow Creek	52,273	Feb. 27, 1919	R. E. Flynn Radersburg	Not Authorized	
	Toston	4,900	June 1, 1920	B. Williams Townsend	Dec. 27, 1920	
	*Valley View	6,560	Aug. 30, 1920	John Sloan Three Forks	Not Authorized	
Carbon	Broadwater	8,700	Apr. 20, 1920	W. G. Ragen Townsend	Not Authorized	
	*Red Lodge-Rosebud	32,000	Aug. 10, 1920	Louie J. Hyem Luther	Not Authorized	
	*Joliet and White Horse Bench	13,000	Sept. 15, 1919	C. F. Oliver Joliet	Not Authorized	
	East Side	7,200	Aug. 25, 1920	J. O. Higham Belfry	Not Authorized	
Cascade	Fort Shaw	7,637.37	June 13, 1919	H. E. Cuiver Ft. Shaw	Not Authorized	
	Ulm	12,271.63	Jan. 3, 1920	Leslie Nichols Ulm	Nov. 29, 1920	
	Chestnut Valley	4,659.47	June 21, 1920	R. E. Bancroft Cascade	July 10, 1920	
	Tongue & Yellowstone River	9,704.93	June 24, 1911	C. H. Loud Miles City	Authorized but no date shown	
Custer	Buffalo Rapids	3,707	Oct. 21, 1914	Mrs. Sarah McKay Kinsey	Aug. 2, 1919	Bonds sold \$80,000
	*Glendive-Fallon	34,440	Dissolved		Not Authorized	
	*Upper Glendive-Fallon	6,120	Dec. 20, 1920	Mrs. Peter Evans Tjensvold, Glendive	Not Authorized	

COUNTY	Name of Irrigation Dist.	Gross Acreage	Date Created	Name and Address of Secretary	Bonds Authorized and Date	Remarks
Dawson	Clear Creek	5,638.24	Apr. 2, 1921	Mrs. August Schaal Glendive	Not Authorized Feb. 5, 1920	
Fergus	Judith Basin	4,300	Oct. 7, 1919			
Flathead	Ashley Lake	1,638	July 13, 1909	C. A. Foot Kalispell	Dec. 8, 1909	Three bond issues \$5,000, \$6,000, \$7,500
	Tally Lake	6,000	Oct. 16, 1919	J. W. Clark R. No. 3 Kalispell	Not Authorized	
Glacier	Cut Bank	17,822	Dec. 16, 1920	C. E. Frisbee Cut Bank	Not Authorized	
Gallatin	*Meadow Farm	1,037	Pending			
	*South Bench	20,717	Pending			
Jefferson	Whitehall	3,940	Mar. 10, 1919	E. R. McCall Whitehall	Apr. 1, 1919	Bonds did not sell Dist. dissolved.
Lewis and Clark	Helena	16,000	Aug. 14, 1920	Day & Mapes Attorneys Helena	Not Authorized	
	*Silver Prickly Pear	15,160	Pending			Creation pending report
		10,000	Aug. 16, 1921	Hugh Thos. Carter Helena	Not Authorized	Motion filed to vacate
Lincoln	Glen Lake	4,204	Feb. 14, 1910	F. P. Garey Eureka	Apr. 6, 1910 Aug. 30, 1910	Bonds did not sell Reconfirmed Nov. 22 1915
	Madison Valley	1,908.70	Mar. 6, 1916		Oct. 9, 1916	Second assessment to- tal bonds sold \$112,000
Madison	*Brockway	3,253	Pending		Not Authorized	Petition filed Oct. 18, 1919
McCone	*Brockway Ash Creek	237	Pending		Not Authorized	Petition filed Feb. 19, 1921
Meagher	*Newlan Creek	1,290	Pending			Pending
	*Wood's Gulch	1,100	Dissolved			Not feasible
Missoula	Clinton	900	Sept. 17, 1919	Mrs. J. Ward Clinton	July 12, 1920 May 28, 1921	Two bond issues total amt. \$22,000
	*DeSmet	5,712	Jan. 9, 1920	A. Besancon Missoula	Not Authorized	

COUNTY	Name of Irrigation Dist.	Gross Acreage	Date Created	Name and Address of Secretary	Bonds Authorized and Date	Remarks
Park	Upper Yellowstone	3,680	Sept. 25, 1920	Harry Smith Livingston	Nov. 29, 1920	Creation pending report
	*Brackett Creek	22,320	Pending		Not Authorized	
Powell	*Cooper's Lake	20,000	Pending			Bonds issued \$25,000
Ravalli	Canyon Creek	2,200	July, 1909			Bonds issued \$40,000
	Blodgett Creek	19,110	Oct., 1910			Old B. R. V. I. Co.
	Charles	847	June, 1918			Bonds issued \$20,000
	Mill Creek	2,224	June, 1910			
	Bitter Root	18,000	Nov., 1921			
	Sunset	3,025	Nov., 1917			
Richland	Lower Yellowstone	39,700		C. B. Patterson Savage	Not Authorized	Petition filed Aug. 5, 1921
Rosebud	Cartersville	12,483.23	July 16, 1909	F. V. H. Collins Billings	Jan. 28, 1910	Bonds sold \$360,000
	Yellowstone	10,000	Jan. 11, 1909	H. V. Beaman Forsyth	Mar. 5, 1910	Bonds sold \$450,000
	Hammond	4,080.40	May 28, 1920	H. V. Beaman Forsyth	Jan. 12, 1921	
	Highland Park	4,933	Apr. 24, 1920	H. V. Beaman Forsyth	Not Authorized	
Stillwater	Columbus	1,288.10	Apr. 21, 1919	P. R. Healy Columbus	Apr. 12, 1919	Bond issue \$40,000
					May 20, 1920	Bond issue \$53,000
					Apr. 7, 1921	Bond issue \$8,000
Sweet Grass	Grey Cliff	2,000	Feb. 14, 1920	F. R. Hickman Grey Cliff	Authorized but no date shown	Bonds did not sell
Teton	Bynum	30,000	Mar. 27, 1920	Edward B. Noble	Not Authorized	
Toole	Toole County	286,000	Sept. 4, 1919	P. R. MacHale Shelby	Not Authorized	
Treasure	Box Elder	1,384	May 19, 1919	T. G. Todd Hysham	Aug. 4, 1919	Bonded for \$40,000
	Big Horn-Tullock	1,597.22	Aug. 4, 1919	W. E. Ungles Big Horn	Nov. 17, 1919	
Wheatland	*Harlowton-Du Rand	32,845	Feb. 5, 1921	E. F. McQuitty Harlowton	Not Authorized	
Yellowstone	Lockwood	2,500	Aug. 1920	A. M. Cooley		
	Waco-Custer	4,500				
	Danford	1,200	Sept. 1920	Custer		
	The Victory	2,800	Sept. 1920			

*Districts under the jurisdiction of Public Service Commission.

Out of the total acreage of 924,927.28 acres, 242,134 acres have filed formal petitions to come under the Public Service Commission. In addition to these, two districts having a total acreage of 17,000 have elected to come under the Commission but the petitions filed were not in accord with law. One other district having an area of 52,273 acres was investigated but did not formally petition to come under the jurisdiction of the Commission. This makes a total of twenty districts having a gross area of 311,134 acres that have been examined, or elected to come under the Commission.

DISTRICTS UNDER THE PUBLIC SERVICE COMMISSION.

Cooper's Lake Irrigation District. Powell County.

Project No. 1. This project is located in the Blackfoot Valley. The area proposed to be irrigated is locally known as "Kleinschmidt Flats". It is proposed to reservoir Cooper's Lake and divert flood waters from the North Fork of the Blackfoot River for storage in the lake.

The petition filed was not in accord with law so further action has been delayed until a formal petition can be presented. Such a petition is now being circulated.

Organization.

Informal petition filed on August 16, 1919.
Gross area of district; 20,000 acres.
Area signed to the petition; 11,610 acres.
Number land owners signed; 18.
Acreage signed was; 58.05 per cent.

Personnel.

Correspondents: H. J. Faust, Drummond, Montana.
E. R. Kilburn, Ovando, Montana.

General Features.

The source of water supply is the North Fork of Blackfoot river and the Cooper Lake drainage areas.

The irrigable area is a long flat alluvial fan.

The soil is sandy loam containing some rocks and a considerable amount of gravel.

The area is free from trees, stumps and brush.

The altitude is 4,300 feet.

Nine Mile Prairie Irrigation District.

Missoula County.

Project No. 2. This project is located in the Blackfoot valley. The land proposed to be irrigated lies on the north side of the river below the mouth of Clearwater River and is locally known as "Nine Mile Prairie". It is proposed to divert water by gravity out of either the Blackfoot or Clearwater Rivers. The petition filed was not in accord with the statute so further action has been delayed until a formal petition can be presented. Such a petition will likely be filed in the near future. The project should prove feasible.

Organization.

Informal petition filed on August 19, 1919.

Gross area of district; 9,000 acres.

Personnel.

Correspondents: Hon. Dan McQuarrie, Missoula, Montana.

A. J. Jamison, Potomac, Mont.

General Features.

The source of water supply is the normal flow from either Blackfoot or Clearwater Rivers.

The irrigable area is flat with good drainage toward the river.

The soil is a sandy gravelly loam with some rocks. The area is free from trees, stumps or brush. The altitude is 3,600 feet.

Frenchtown Valley Irrigation District.

Missoula County.

Project No. 3. This project is located in Frenchtown Valley some 15 miles west of Missoula. It is proposed to divert water by gravity out of Clark's Fork River. A private engineer surveyed the project in 1919 and estimated the cost at \$24.61 per acre. The project should prove feasible.

The petition filed was not sufficient so further action has been delayed until a formal and proper petition can be presented.

Organization.

Informal petition filed October 11, 1919.

Gross area of district 8,000 acres.

Number of signers to the petition; 6.

Personnel.

Correspondents; Senator Ed Donlan, Missoula, Montana.

General Features.

Source of water supply is the normal flow of Clark's Fork of the Columbia River.

The irrigable area is flat river valley land free from brush, trees or stumps.

The soil is alluvial sandy loam.

The altitude is; 3,100 feet.

Growing season ranges from 100 to 120 days.

Annual precipitation: Varies from 12 to 18 inches.

Estimated total cost (private engineers) \$196,867.20.

Estimated cost per acre (private engineers) \$24.61.

De Smet Irrigation District.

Missoula County.

Project No. 4. This project is located on a strip of rolling bench land locally known as the "De Smet Bench" about five miles northwest of Missoula. It is proposed to divert water from Clark's Fork river by gravity to the foot of the bench then pump by electric power to the top of the bench. Three pumping and two gravity systems were investigated.

A formal petition was filed, an investigation and report made and the district created, but no further steps have been taken.

Organization.

Petition filed October 8, 1919.

The gross area under the canals is 5,712.3 acres.

There are 37 land owners in the district.

There are 24 signers to the petition, or 64.32%.

Date deposit was made, October 29, 1919.

Amount of deposit: \$300.00.

Cost of the investigation: \$202.11.

Balance returned; \$97.89, August 5, 1920.

Cost per acre; \$.035.

Date of report: December 12, 1919.

Recommendation: Favorable if under good management.

District created by court order: January 9, 1920.

Number of divisions; 4.

Personnel.

Directors; Harry Danforth, Missoula, Montana.

Dan Hamel, Missoula, Montana.

J. A. Bisson, Missoula, Montana.

Wm. Seltz, Missoula, Montana.

Secretary and Attorney: Albert Besancon, Missoula, Montana.

General Features.

Source of water supply: Clark's Fork of the Columbia.

System: Gravity canal 3 miles long from the river to foot of the bench, then pumping to the top of the bench, then distributing by canals and laterals.

Lifts: One pumping station, two lifts, 131.3 feet and 70.8 feet.

Power: Electric.

Area: The low lift will irrigate 2,852 acres (net) and the high lift will irrigate 2,075 acres (net). The total net irrigable area is 4,927 acres.

Peak loads; Low lift 544 HP. and high lift 693 HP. Total 1,238 HP.

Power consumption, annual: Low lift 342 HP. High lift 435 HP. Total 777 HP.

Pump capacities: Low lift 76 second feet. High lift 32 second feet.

Duty of water; 2 1-2 acre feet per acre at the pumps, 2 acre feet delivered to the land.

Maximum duty required: (July), 0.95 acre feet per acre.

Length of irrigating season: 120 days.

Altitude: 3,200 feet.

Soil: Clay and sandy loam, free from trees, stumps or brush.

Precipitation: 14.91 inches annually.

Costs: Total estimated cost \$197,004.50, or \$29.98 per acre.

Maintenance cost: Estimated annual maintenance cost \$4.47 per acre.

Glendive-Fallon Irrigation District.

Prairie and Dawson Counties.

Project No. 5. This project proposed the irrigation of lands along both sides of the Yellowstone River extending from Fallon to Glendive. The scheme was to pump the water from the Yellowstone River by steam power generated by local lignite coal. Two auxiliary pumping stations, operated by electric current generated at the central plant, were to be installed. The investigation of the project included a survey of a gravity canal out of the river besides nine different pumping schemes. Only one pumping scheme covering 18% of the total area of the project proved feasible. It was recommended the district be dissolved and a new one created to include this feasible part, which was done and is described as project number 15. *infra.*

Organization.

Petition filed in Dawson County.
Date of filing, October 4, 1919.
Gross acreage in the district, 34,440.
Number acres signed to the petition: 20,744 or 60.23%.
Number of owners signed to the petition: 79 or 63.2%.
Date first deposit was made: December 2, 1919.
Date second deposit was made: April 17, 1920.
Amount of first deposit: \$800.00.
Amount of second deposit: \$600.00.
Cost of investigation and report: \$1,309.95.
Cost per acre (gross), \$0.038.
Balance of deposit \$90.05 returned to the petitioners on August 31, 1920.
Date of report: April 28, 1920.
Recommendation: That the district be dissolved and a new one created for smaller area (See project No. 15.)
Date of hearing: July 30, 1920.
Action: District dissolved.

Personnel.

Correspondent: Thos. F. Hagen, Glendive, Montana.
C. A. Thurston Glendive, Montana.
Attorneys: Anderson, Gillis and Courselle, Glendive, Montana.

General Features.

Source of water supply: Yellowstone River.
System: Pumping by steam power using local lignite coal.
Land: Flat river valley, free from trees, stumps and brush.
Soil: Deep rich clay loam.
Topography: Flat bench land free from brush, stumps and boulders.
Scheme: Nine different pumping schemes were investigated and a gravity canal.
Duty of water: Two acre feet per acre at the pumps.
Season: Length of growing season is 130 days.
Precipitation: Average for 9 years, 10.72 inches.
Altitude: 2,150 feet.
Irrigable area: 22,475 acres.
Gravity Canal intake will be 10 miles below Miles City.

Costs: Recommended scheme total cost \$159,-713.00 or \$37.54 per acre.

Maintenance Cost: For same system, including operating cost of pumping, \$6.38 per acre.

Brockway Irrigation District.

McCone County.

Project No. 6. It was proposed to irrigate a strip of river bottom land along both sides of Redwater River at Brockway, Montana. Storage would have to be depended upon entirely. The streams are all flood water streams that go dry in the summer. Five reservoirs sites were surveyed, one on Ash Creek, two on Duck Creek and two on Redwater River. All these reservoirs would not be needed but they were all surveyed to determine the most feasible ones. The Commission recommended that this project be kept alive until some detailed information could be obtained about the water supply.

Organization.

Petition filed: October 18, 1919.

Gross area of the district under canals: 3,253 acres.

Net irrigable area: 2,740 acres.

Date of deposit: December 11, 1919.

Amount of deposit: \$600.00.

Cost of investigation and report: \$276.35.

Cost per acre (gross): \$0.085.

Balance of deposit: \$323.65, returned to the petitioners on October 22, 1920.

Date of report: August 26, 1920.

Recommendation: That the project may be feasible but there is no data on the water supply.

Personnel.

Correspondent: Jas. A. Brockway, Brockway, Montana.

Attorney: Anderson, Gillis & Coursolle, Glendive, Montana.

General Features.

Source of water supply: Duck and Ash Creek and Redwater River.

System: Storage of flood waters.

Soil: Deep sandy clay loam.

Topography: Flat river valley land free from rocks, brush, trees or stumps.

Growing season, 120 days.

Precipitation: Average for 18 years is 18.65 inches per annum.

Altitude: 2,500 feet.

Duty of water: 1.37 acre-feet per acre on the land, head main canal 2.09 acre-feet, in the reservoir 2.32 acre-feet.

Dams: Earth fill.

Reservoirs:

Res. No.	Stream	Drainage Area Square Miles	Length Dam Ft.	Height Dam Ft.	Capacity Acre Feet	Area Acres
1	Duck Cr.	64	1,175	37	2,736	157.28
2	Duck Cr.	64	1,115	26	1,172	96.89
3	Ash Cr.	45	530	30	1,469	116.21
4	Redwater	156	1,675	30	2,485	247
5	Redwater	220	898	19	1,350	153

Costs of Reservoirs:

No.	Total Cost	Cost Per Acre Foot
1	\$90,360	\$33.02
2	42,000	35.84
3	39,756	27.06
4	35,876	30.53
5	38,477	28.50

Cost of Project.

Reservoirs	Total Storage ac. ft.	Total Cost	Cost Per Acre	Remarks.
1, 2, 3	5,377	\$228,168	\$ 90.57	
1, 2, 4	6,393	264,288	96.45	
1, 3, 4	6,690	238,812	87.16	
1, 2, 3, 5	6,727	266,645	97.32	
2, 4	3,657	135,396	99.04	Area north of river only
3, 4	3,954	133,152	97.40	
2, 3, 5	3,991	137,753	100.77	
1, 3	4,205	145,416	105.91	Area south of river only
1	2,736	105,660	76.95	

Valley View Irrigation District.

Broadwater County.

Project No. 7. This project is located on a strip of high bench land on the west side of the Jefferson River, about four miles west of Three Forks. It is proposed to pump water by electric power from the Jefferson River. Two petitions and two reports were made on this district. At the court hearing on the first petition it was found that titles and owners were incorrect so the proceedings were dissolved and a second petition filed. This project will be the first to offer bonds for sale. The resident engineer has submitted his final report and the Commission is now preparing its final recommendations.

Organization.

First petition filed: January 7, 1920.

Second petition filed: June 18, 1920.

Gross area project: 6,560 acres.

Area signed to the petition: 4,872 acres or 74.4 per cent.

Number owners in the district: 27.
Number owners signed the petition: 25 or 92.6 per cent.
Date deposit was made: February 10, 1920.
Amount of deposit: \$300.00.
Cost of investigation and report: \$284.64.
Cost per acre: \$0.043.
Date of first report: April 19, 1920.
Date of second report: June 18, 1920.
Recommendations: Feasible under good management.
District created by court: August 30, 1920.
Number of divisions of the district: 3.
Date of resident engineer's contract: November 8, 1920.
Date of resident engineer's final report: August 22, 1921.
Total amount of assessment for 1921: \$2,694.53.
Assessment per acre: \$1.00.

Personnel.

Directors: Frank Martin, Three Forks; John Sloan, Three Forks; Gail Haigh, Three Forks.
Secretary: John Sloan, Three Forks.
Resident Engineer: Fred M. Brown, Bozeman.
Attorney: Edgar Ewers, Three Forks.

General Features.

Source of water supply: Jefferson River.
Soil: Light sandy clay loam rich in lime.
System: Pumping by electric power.
Topography: Flat compact area free from trees, stumps, brush or rocks.
Altitude: 4,200 feet.
Length of growing season: 120 days.
Duty of water at the pumps: 2 acre-feet per acre.
Maximum demand (July): 0.76 acre-feet per acre.
Precipitation: Annual average for 7 years, 11.29 inches.

From the Resident Engineer's Final Report.

Number of lifts: 2.
Height of lifts: 137 feet, 186 feet.
Irrigable area under low lift: 1,300 acres, high lift, 1,395.
Peak Load: Low lift 400 HP., high lift 600 HP., total 1,000 HP.
Annual power consumption: Low lift, 589,948 KWH., high lift 875,013 KWH. Total 1,464-961 KWH.

Pumps: Capacity low lift; 17 second-feet; high lift, 18 second-feet.

Costs: Total estimated cost, \$100,782.80.

Estimated cost per acre for construction: \$37.40.

Bonds: Estimated amount of issue to include cost of construction, 15 per cent discount of face value of bonds, and first three years' interest on bonds \$144,595.12.

Maintenance cost: Total estimated per year, \$17,-737.94.

Maintenance cost estimated: Low lift, \$5.64 per acre per year; high lift, \$7.47 per acre per year; cost per year uniformly distributed, \$6.58 per acre.

East Bench Irrigation District.

Beaverhead County.

Project No .8. This proposed project lies on a strip of bench land east and north of Dillon. It is proposed to divert water by gravity out of Beaverhead River until the excess normal flow is exhausted and then use stored water from a proposed reservoir on Grasshopper Creek.

After the filed investigation and report were completed, the land owners filed a new petition to recreate the district and added about 4,000 acres of land. It is now proposed to abandon the Grasshopper reservoir and purchase stock in the Red Rock Lake reservoir. The second investigation and report are now being made.

Organization.

First petition filed: March 6, 1920.

Gross area in first petition: 22,700 acres.

Number land owners in first petition: 78.

Date of deposit: May 4, 1920.

Amount of deposit: \$400.00.

Cost of first investigation and report: \$324.29.

Cost per acre (gross) \$.014.

Date of first report: January 21, 1921.

Recommendations: Feasible.

Second petition filed: June 29, 1921.

Gross area in second petition: 23,501.

Number of land owners in second petition: 89.

Number of land owners signed to the second petition: 72, or 81 per cent.

Deposit: No additional requested.

Second report now being prepared.

Personnel.

Correspondent: John T. Neal, Dillon, Montana.
Attorneys: Norris, Hurd & Collins, Dillon, Montana.

General Features. (Data from first report.)

Source of water supply: Normal flow of Beaverhead River, until supply is exhausted and then stored water from Grasshopper Creek for the remainder of the season.

System: Storage and gravity system of distribution.

Soil: Sandy clay loam with clay sub-soil.

Topography: Generally, flat bench cut by many deep coulees.

Irrigable area: 13,900 acres.

Altitude: 5,000 to 5,200 feet.

Growing season: 117 days.

Precipitation: Average for 11 years is 18.98 inches per annum.

Duty of water: 1.25 acre-feet per acre delivered to the land. Maximum duty, (July) 0.5 acre-feet per acre. Duty in the reservoir 2.38 acre-feet per acre. Duty at head of main canal 2.24 acre-feet.

Main Canal: Beaverhead to Grasshopper Creek, 21-2 miles long, capacity 126 second-feet. The remainder has a capacity of 202 second-feet. Total length of main canal 45.8 miles.

Laterals: Total length 41 miles.

Reservoir and dam: Length of crest of dam 375 feet, height of dam 106 feet, capacity of reservoir 21,870 acre-feet, area flooded 554 acres. Type of dam, reinforced concrete arch.

Structures: Syphon crossing Beaverhead River 560 feet long, one tunnel through rock 675 feet long, concrete diversions on Beaverhead River and Grasshopper Creek, concrete portals for siphons and tunnel, 21-2 miles of main canal will be flume or concrete lined.

Costs: Total estimated cost of the project \$761,784.00. Estimated cost per acre \$54.81. Estimated annual maintenance cost \$1.50 per acre.

Harlowton-Du Rand Irrigation District.

Wheatland County.

Project No. 9. This project lies on a strip of high rolling bench land north and west of Harlowton. It is proposed to divert water out of the Musselshell River until the

normal flow is exhausted and then use stored water for the remainder of the season. Four reservoir sites can be developed, one on Cottonwood Creek, one on the North Fork of the Musselshell River, and two along the main canal line below the intake. Water will be diverted into the North Fork Reservoir from Smith River, Spring Creek and Checkboard Creek.

The original petition included more land than storage water could be supplied for, so the report recommended excluding all the area lying east of Antelope Creek.

The court created the district and appointed the directors but nothing further has been done.

Organization.

Petition filed, March 17, 1920.

Gross area of district: 32,845 acres under the canals.

Total number land owners in the district: 93.

Total net irrigable area: 28,988 acres.

Net area water can supply: 16,304 acres.

Date of deposit: April 10, 1920.

Amount of deposit: \$600.00.

Total cost of investigation and report: \$502.98.

Cost per acre (Gross): \$0.015.

Balance of deposit: \$97.02 returned to the petitioners on February 5, 1921.

Date of the report: October 1, 1920.

Recommendations: Project feasible for the part lying west of Antelope Creek having a net irrigable area of 16,590 acres.

District created by court: February 5, 1921.

Number of divisions of the district: 3.

Resident engineer: None appointed.

Assessment for 1920: None made.

Personnel.

Commissioners: W. N. Smith, Harlowton, Montana; L. L. Dixon, Harlowton, Montana; E. F. McQuitty, Harlowton, Montana.

Secretary: E. F. McQuitty, Harlowton, Montana.

Attorneys: Jones and Jones, Harlowton Montana.

General Features.

Source of water supply: Musselshell River and tributaries and Smith River.

System: Normal flow of Musselshell River and storage. Gravity distribution.

Soil: Sandy loam rich in lime.

Topography: Both flat and rolling areas.

Altitude: 4,100 feet.

Growing season: 110 days.

Precipitation: 10.84 inches annually.

Duty of water: Delivered to the land, 1.25 acre-feet per acre; at the head of the main canal, 2.21 acre-feet per acre; in the reservoirs, 2.35 acre-feet per acre; maximum monthly duty (July) 40 per cent.

Main Canals: Capacity main canal 232 second-feet; Checkerboard Supply Canal, 146 second-feet; Spring Creek supply canal, 121 second-feet; Smith River supply canal, 96 second-feet.

Reservoirs and Dams: All are earth fill. The Du Rand dam will have a concrete core wall.

Reservoirs	Capacity ac. ft.	Acres Flooded	Height Dam ft.	Cost Per ac. ft.
Du Rand	20,000	695	130	\$ 9.27
Cottonwood	1,235	46	60	26.77
Martinsdale	4,189	297	50	31.52
Two Dot	1,780	109	36	37.69

Structures: Exclusive of reservoirs and dams.

Diversion works on both the north and south Forks of Musselshell River, Spring Creek, Smith River and Checkerboard Creek. Flood gates, Coulee Crossings and diversion gates.

Costs: The total estimated cost of the project is \$915,778.00 or \$56.17 per acre for the irrigable area. The estimated maintenance cost is \$1.00 per acre per year.

Red Lodge-Rosebud Irrigation District.

Carbon County.

Project No. 10. This project is located in a rolling country along the foot of the Bear-Tooth Mountains between East Rosebud River and Red Lodge. It is proposed to use the normal flow of East Rosebud River by a gravity distribution system. In 1903, this project was started and ten miles of the main canal were dug, but the system was never completed. This old canal has now been purchased by the irrigation district for \$27,000.

Field surveys have just been completed by the district engineers and their final report will soon be filed with the Commission. It is expected that this district will be ready to offer bonds for sale in the very near future.

Organization.

Petition filed: March 25, 1920.

Gross area of the district: 32,000 acres.

Total number land owners in the district: 116.

Area signed to the petition: 18,299 acres, or 57 per cent.
Number of owners who signed the petition: 64 or 55 per cent.
Date of deposit: April 14, 1920.
Amount of deposit: \$800.00.
Cost of investigation and report: \$606.46.
Cost per acre (Gross): \$0.019.
Date of report: August 5, 1920.
Recommendation: Feasible.
District created by court: August 10, 1920.
Number of divisions of the district: 3.
Date authorizing the purchase of West canal: October 20, 1920.
Amount of the purchase: \$27,000.
Date of resident engineer's contract: June, 1921.
Amount of assessment for 1920: \$3,299.73.
Assessment per acre: 30c.

Personnel.

Directors: John A. Fiveland, President, Luther, Montana; Harry Edwards, Red Lodge, Montana; Louie J. Hyem, Secretary, Luther, Montana.
Resident Engineer: David Lay, Red Lodge Montana.
Attorney: John G. Skinner, Red Loge, Montana.

General Features.

Source of water supply: East Rosebud River.
System: Normal flow distributed by gravity.
Soil: Clay loam.
Topography: Rolling.
Irrigible area: 12,510 acres.
Altitude: 4,700 feet.
Growing season: 84 days.
Precipitation: The mean annual for 19 years is 20.10 inches.
Duty of water: 1.50 acre-feet per acre (net delivery.)
Maximum duty: July, 50 per cent of yearly total.
Main canal capacity: 200 second-feet, 30 miles long.
Laterals: 55 miles.
Structures: Several short flume crossings, diversion works, culverts at creek crossings, one tunnel (now constructed) two siphons, turn-outs and drops.

Costs: The total estimated cost is \$324,800 or \$25.98 per acre for the irrigable area. The yearly maintenance cost is estimated to be \$1.00 per acre per year.

Joliet and White Horse Bench Irrigation District.

Carbon County.

Project No. 11. This project includes about 13,000 acres of rolling bench lands extending north from Joliet to the Yellowstone River. Of this area only 8,000 acres are actually irrigible. The proposed source of water supply is from Rock Creek and Red Lodge Creek, with diversion at the junction of these two creeks. The normal flow of these creeks is to be supplemented by storage.

This district differs from all others now under state jurisdiction in that it was already created by the court under the old irrigation district law at the time the Irrigation Commission was asked to assume supervision and make the investigation.

The engineering plans under the former organization called for reservoir storage on certain mountain lakes at the head of Rock Creek. The report later made by the Commission and the State Engineer recommended storage on East Rosebud river as more feasible, and changed the plan of reclamation accordingly. The reservoir site on East Rosebud River is a favorable one with more than ample capacity and a relatively low construction cost. The stored water is to be diverted by seven miles of canal into a tributary of Red Lodge Creek, whence it will follow the natural channel to Rock Creek.

The proposed distribution system consists of 18 miles of main canal and 22 miles of laterals including short sections of flume, siphon and tunnel.

Organization.

District created by court: September 15, 1919
(under old law.)

District engineer's report submitted: March 11, 1920.

Petition for State supervision filed: April 2, 1920.

Number of land owners in the district: 70.

Number of land owners signing petition: 43, or
61.42 per cent.

Date of deposit: August 27, 1920.

Amount of deposit: \$800.00.

Total cost of investigation: \$362.11.

Cost per acre (Gross): \$0.028.

Balance of deposit: \$437.89 returned May 31,
1921.

Date of report by state: December 20, 1920.
Recommendations: Feasible, but delay advised
awaiting cheaper construction costs.
Amount of assessment for 1921: \$1,125.00.
Area subject to assessment: 7,500 acres.
Assessment per acre: 15c.

Personnel.

Directors: Floyd Mathews, President, Joliet, Montana; Clarence Holmden, Carl Mackey.
Secretary: C. F. Oliver, Joliet, Montana.
Resident engineer: S. C. Kimball, Billings, Montana.

General Features.

Source of water supply: Red Lodge and Rock Creeks and East Rosebud River.
System: Gravity distribution using direct flow supplemented by storage.
Soil: Light sandy loam to heavy clay loam.
Topography: Rolling, no trees or brush.
Irrigable area (State report): 8,000 acres.
Altitude: 3,600 feet.
Growing season: 125 days.
Precipitation: 14.03 inches.
Average holding per owner: 186 acres.
Average irrigable acreage per owner: 108 acres.
Present land value: \$25.00 per acre.
Estimated value when irrigated: \$100.00 per acre.
Duty of water (net delivery): 1 1-2 acre-feet per acre.
Estimated supply from normal: 3-4 acre-foot per acre.
Estimated supply from storage: 3-4 acre-foot per acre.
Estimated losses in transit: 1-2 acre-foot per acre.
Required storage capacity: 10,000 acre-feet, or 1 1-4 acre-feet per acre.
Main canal capacity: 182 second-feet.
Reservoirs: Rosebud reservoir; height of dam 45 feet, length of crest 1,220 feet; type of dam, hydraulic fill; area flooded 700 acres; capacity 10,000 acre-feet.
Black Canyon reservoir: Natural dam, 800 feet long, 300 feet high; tunnel 1,280 feet long required to draw off water; present water surface 72 acres; capacity (top 50 feet), 2,850 acre-feet.

Third Lake Reservoir: Height of dam 40 feet, length of crest, 370 feet; type of dam, rock fill; area flooded 47 acres; capacity 2,100 acre-feet.

Costs: The total costs as estimated in the state report is \$425,000.00 or \$53.12 per acre. Construction costs have been reduced considerably since the date of this report.

Newlan Creek Irrigation District.

Meagher County.

Project No. 12. This project is situated along Newlan Creek in the Smith River Valley about nine miles northwest of White Sulphur Springs. It is proposed to divert water out of Sheep Creek into Newlan Creek and divert water onto the land by a gravity system. A preliminary trip was made over the project last December. The petitioners have never made a deposit as requested, so further investigation is still pending.

Organization.

Petition was filed August 9, 1920.

Gross area of the district: 1,290 acres.

Number of land owners in the district: 6, and all signed the petition.

Deposit requested: \$500.00. Later changed to \$50.00 providing board, lodging and transportation were furnished.

Personnel.

Correspondent: E. McDaniel, White Sulphur Springs.

General Features.

Source of water supply: Normal flow of Sheep and Newlan Creeks.

System: Gravity.

Soil: Sandy loam.

Topography: Gently rolling bench land.

Altitude: Approximately 5,000 feet.

Growing season: About 75 days.

Precipitation: Mean annual is about 13 inches.

Canals: Diversion canal from Sheep to Newlan Creek will be approximately 5 miles long. This canal was completed, save 1 1-4 miles about 20 years ago. It was designed to carry 500 miner's inches. Eleven miles down Newlan Creek water is to be diverted onto the land by short canals on both sides of the Creek.

Wood's Gulch Irrigation District.

Meagher County.

Project No. 13. This project is located on a strip of rolling country at the mouth of Wood's Gulch about ten miles west of White Sulphur Springs. Storage is to be depended upon for a water supply. Three reservoirs and systems of developing the project were surveyed. The project was not economically feasible so the district was dissolved.

Organization.

Petition was filed: May 3, 1920.

Gross area of the district: 1,100 acres.

Number land owners in the district: Four, and all signed the petition.

Date deposit was made: October 7, 1920.

Amount of deposit: \$50.00

Cost of investigation and report: \$20.77. (The local people paid all board and transportation in addition to this amount.)

Balance of deposit: \$29.23, returned to the petitioners in November, 1921.

Date of report: February 21, 1921.

Recommendation: That the district be dissolved as not economically feasible.

Court action: District was dissolved.

Personnel.

Correspondent: Dr. C. B. Spohr, Missoula, Montana.

General Features.

Source of water supply: Wood's Gulch and Little Birch Creek.

Scheme: Storage of flood water and distribution by gravity. Three schemes were investigated; 1st. One reservoir only on the south Fork and a diversion canal from the North Fork into the reservoir. 2nd. Two dams, one on each fork thus making one reservoir. 3rd. Build the reservoir in scheme 1, and also a reservoir on the upper North Fork.

Soil: Light sandy loam.

Topography: Rolling, free from trees, stumps and brush.

Irrigable area: East side 116 acres, West side 764 acres, total 880 acres.

Altitude: 5,000 feet.

Growing season: 75 days.

Precipitation: Annual mean over a period of 31 years is 13.01 inches.

Duty of water: At the land 1.25 acre-feet per acre, at the head of the main canal 2.29 acre-feet per acre, in the reservoirs 2.60 acre-feet per acre. Maximum duty. (July), 50 per cent.

Canals: East side main canal is 1.4 miles long, with a capacity of 3 second feet; the west side canal is 7.3 miles long and capacity of 14 second feet; North Fork supply canal 2,200 feet long capacity of 18 second-feet. Little Birch Creek supply canal 4,000 feet long, capacity 15 second-feet.

Reservoirs and Dams: Earth fill.

Scheme	Dam	Capacity Acre Ft.	Acres Flooded	Height Dam Ft.	Cost Per Acre Foot
1	South Fork and Dike	2,528	191	52	\$25.56
2	South Fork	2,418	194	50	24.89
	North Fork			36	
3	Upper N. Fork	1,094	71	47	31.39
	South Fork	1,407	130	45	.....

Drainage Areas: On Birch Creek above the diversion canal 11 square miles. On North Fork above the upper reservoir 5.7 square miles. On South Fork above the lower reservoir 9.3 square miles. Total drainage area available, 26 square miles.

Structures: Except for the dams and reservoirs the only structures will be diversion works in Little Birch Creek and the North Fork, short flumes over gulches, turn-outs and bridges.

Costs: The estimated costs are:

Scheme	Total Cost	Cost per Acre	Yearly Maintenance Cost
1	\$ 92,558	\$102.83	\$1.50
2	86,250	95.82	1.50
3	106,435	118.25	1.50

Meadow Farm Irrigation District.

Gallatin County.

Project No. 14 This project is located in the Jefferson River valley two miles southwest of Three Forks. It is proposed to divert water out of the Jefferson River by gravity. The deposit has not yet been made so the investigation is still pending.

Organization.

Petition filed: July 24, 1920.

Gross area of the district: 1,037 acres.

Number of land owners: 1.

Date deposit was requested: July 28, 1920.

Amount requested: \$200.00.

Deposit not made.

Personnel.

Owners: Adams Realty Company, Three Forks, Montana.

General Features.

Source water supply: Jefferson River.

System: Normal flow distributed by gravity.

Soil: Sandy clay loam, gravel sub-soil.

Topography: Flat and free from trees, stumps, brush or rocks.

Altitude: 4,070 feet.

Growing season: 120 days.

Precipitation: Mean annual over a period of 7 years is 11.29 inches.

Upper Glendive-Fallon Irrigation District.

Prairie and Dawson Counties.

Project No. 15......This project lies in the Yellowstone River valley across the river from Fallon. It is a segregation of the feasible part of Project No. 5. A pumping plant installed some eleven years ago is located at the upper end of the project. It is proposed to remodel and enlarge this plant to meet the present needs. Steam power will be used generated by local lignite coal. The resident engineer's final report is expected to be filed in the near future.

Organization.

Petition was filed in Dawson County.

Petition was filed on August 31, 1920.

Gross area of district: 6,120 acres.

Total number owners: 22.

Number owners signed to the petition: 13, or 59.1 per cent.

Date deposit was made: October 6, 1920.

Amount of deposit: \$100.00.

Cost of investigation and report: \$29.11.

Cost per acre \$0.005 (all the field work was done in connection with Project No. 5.)

Date of report: October 19, 1920.

Recommendation: Feasible under good management.

District created by court: December 20, 1920.

Number of divisions of the district: 3.

Date of resident engineer's contract: April 13, 1921.

Annual assessment for 1920: \$3,980.32.

Assessment per acre: \$1.10.

Personnel.

Directors: Albert Anderson, Fred Yale, Peter E. Tjensvold.
Secretary: Mrs. Peter Evans Tjensvold, Glendive, Montana.
Resident engineer: Dennis P. Woods, Spokane, Washington.
Attorneys: Anderson & Coursolle, Glendive, Montana.

General Features.

Source of water supply: Yellowstone River.
System: Pumping by steam power generated by local lignite coal. There are two lifts, one 40 feet and the other 75 feet.
Soil: Clay loam.
Topography: Flat area free from trees, stumps, brush and rocks.
Irrigable area: Under the 40-foot lift 1,660 acres, and under the 75-foot lift 2,550 acres. Total net area 4,210 acres.
Altitude: 2,150 feet.
Growing season: 130 days.
Precipitation: The average for 9 years is 10.72 inches.
Duty of water: 2 acre-feet per acre at the pumps. Maximum demand 0.76 acre-feet in July.
Peak loading: 133 HP. for the 40 feet lift, 394 HP. for the 75 feet lift, total 527 HP.
Average loading: 84 HP. for the 40 feet lift and 247 HP. for the 75 feet lift. Total 331 HP.
Coal consumption: Estimated at 13 pounds per HP. Hour. Yearly consumption 6,713 short tons. 160 acres of coal land will operate the plant 159 years.
Pump capacities: Low lift 14.8 second-feet. High lift 31.3 second-feet.
Old plant equipment: Four 150 HP. boilers, one Hamilton Carliss high speed type 250 HP. steam engine, one 150 HP. simple type steam engine, one 18-in. centrifugal pump, double suction type, one 18-in centrifugal pump, single suction type, complete piping and auxiliary equipment.
Costs: Total estimated cost \$152,394; cost per acre \$36.20. The maintenance cost is estimated at \$6.18 per acre per year.

Crow Creek Irrigation District.

Broadwater County.

Project No. 16. This project lies in Crow Creek Valley, extending south and east from Radersburg and being 15 miles north of Three Forks and 40 miles southeast of Helena. The proposed sources of water supply are Jefferson River and Crow Creek, storage being necessary on both streams. The gross acreage in the district is 52,000 acres and the net irrigable area is 40,000. Of this latter amount, about one fourth was to have been supplied from Crow Creek and the rest from Jefferson River.

The Crow Creek unit of the project would require an expensive reservoir on Crow Creek besides 10 miles of main canal and 15 miles of laterals. The Jefferson unit would require a large dam on Big Hole River, besides 75 miles of main canal, 38 miles of branch canals and 90 miles of laterals. The main canal would include 1 mile of siphon, 2 miles of tunnel, 9 miles of flume and 9 miles on concrete lining.

This district had been created by the court and most of the preliminary engineering completed by the district engineers before the Montana Irrigation Commission was asked to report on the project. As requested by the district, the Commission checked over the plans of the district engineers and based its report and estimate of cost on the system as proposed by the district engineers.

The field investigation was made by the Commission's engineers during January to May of the present year, and the report issued July 16th. The investigation showed that the available water supply from Crow Creek was insufficient for the full acreage under that unit and that the main canal from Jefferson River had capacity to serve an area much less than proposed by the district engineers.

The estimate of cost based on May, 1921, prices, for a system as located and planned by the district engineers was \$188.00 per acre, although it was suggested that by revising the location and altering the plans a much lower estimate would be possible. The project was reported unfeasible.

Organization.

District created by court: February 27, 1919.

Gross acreage in district as first created: 29,056 acres.

District enlarged by court: August 16, 1920.

Additional acreage added: 23,217 acres.

Number of owners in district: 159.

Average holding per owner: 329.

Average present land value \$15.00 to \$18.00 per acre.

Estimated value when irrigated: \$75.00 to \$100.
Enlargement proceedings appealed to Supreme Court where it is still pending. (November 15, 1921).

First referred to Montana Irrigation Commission, September, 1920.

Date of deposit: January 10, 1921.

Amount of deposit: \$600.00.

Cost of investigation and report: \$299.67.

Cost per acre (in district) \$0.006.

Balance of deposit returned: August 1, 1921.

Report issued: July 16, 1921.

Recommendation: Unfavorable.

Personnel.

Commissioners: A. M. Kimpton, Pres., Radersburg; Fred Schmiedeskamp, Radersburg; C. E. Cox, Radersburg.

John A. Peugh, Toston, Montana.

Secretary: Robert E. Flynn, Radersburg, Montana.

District engineer: Gerharz-Jaqueth Engineering Company, Great Falls, Montana.

Attorneys: Walsh, Nolan and Scallon, Helena, Montana.

General Features.

Source of water supply: Jefferson River, Crow Creek.

System: Storage reservoir on Crow Creek, storage reservoir on Big Hole River.

Soil: Light sandy silt to heavy clay loam.

Topography: Gently sloping valley lands.

Irrigable area: 40,000 acres net.

Growing season: 141 days.

Precipitation: 11 inches.

Altitude: 4,250 feet.

Duty of water: 1 1-2 acre-feet per acre (net delivery.)

Main canal capacity: 600 second-feet at intake; 410 second-feet at lower end.

Reservoirs and dams: Crow Creek reservoir, area flooded 125 acres, height of dam 166 feet. length of crest 830 feet, rock-fill type. Concrete diversion dam at intake to West Crow Creek canal; capacity 7,500 acre-feet.

Big Hole reservoir: Area flooded 1,850 acres, height of dam 90 feet, length of crest 540 feet, rock-fill type, concrete diversion dam on Jefferson River at intake to Jefferson canal; capacity 50,000 acre-feet.

Other structures: 1 mile of siphon, 2 miles of tunnels, 9 miles of flumes, 9 miles concrete lining, intakes, bridges, gates, etc.

Costs: The total cost of the project is estimated at \$6,607,000 or \$188.77 per acre.

Brockway-Ash Creek Irrigation District.

McCone County.

Project No. 17. This project covers an area around the town of Brockway. Practically the same land in this project was included in Project No. 6. It is proposed to rebuild an old reservoir on Ash Creek that washed out several years ago and divert the water onto the land by a gravity system of canals and laterals: storage system is to be depended upon.

After a request was made for the deposit the Commission was advised that the petitioners wished the investigation and report withheld for a time so the report is still pending. The necessary field data was collected in connection with Project No. 6, so it will not be necessary to make another survey.

Organization.

Petition was filed: February 19, 1921.

Gross area of the district; 237 acres.

Number land owners in the district: 1.

Date deposit was requested; March 8, 1921.

Amount requested; \$20.00.

Personnel.

Owner; Jas. A. Brockway, Brockway, Montana.

General Features.

Source of water supply, flood waters from Ash Creek.

Drainage area: 45 square miles.

System: Storage and gravity distribution canal.

Soil: Deep sandy clay loam.

Topography: Flat, even slope free from trees, stumps, brush or rocks.

Altitude: About 2,500 feet.

Growing season: 120 days.

Precipitation: Mean annual over a period of 18 years is 18.65 inches.

Reservoir and dam: Total length dam 169 feet, maximum height 28 feet.

Volume of material needed to replace washed out section: 4,700 cubic yards. The reservoir covers 35 acres and has a capacity of 342 acre-feet.

Structures: The main canal is nearly all built except cleaning out and extending. No structure will be required except turn-outs and wagon bridges.

South Bench Irrigation District. Gallatin County.

Project No. 18. This project lies on the high bench between Willow Creek and the Madison River and extends south from Three Forks. It is proposed to build a dam at the confluence of Willow and Norwegian Creeks to conserve the excess flow and divert the water onto the land by a gravity system of canals. The first four miles of the main canal is through a rough rocky canyon requiring flume and concrete lining.

The bulk of the land is flat, cut by occasional coulees with a few small areas quite rolling. It has all been dry farmed with fair success. The soil is very fertile and will produce well under irrigation.

Two reservoir sites were surveyed, the one mentioned above which proved the more feasible, and the other one in Norwegian Creek a half-mile above the confluence of the two streams. A diversion canal would have to be built to divert waters of Willow Creek into the reservoir.

Organization.

Petition filed March 5, 1921.

Gross area of the district: 20,717.11 acres.

Total number of land owners in the district: 52.

Area signed to the petition: 31, or 59.61 per cent.

Date deposit was made: April 6, 1921.

Amount of the deposit: \$600.00.

Cost of investigation and report: \$437.63.

Cost per acre (gross): \$0.0211.

Date of the report: September 20, 1921.

Recommendations: Favorable.

District not yet created by court order.

Personnel.

Correspondent: Wm. Buttleman, Willow Creek, Montana.

General Features.

Source of water supply: Willow Creek and Norwegian Creek.

System: Storage of flood waters and a gravity distribution system. Only 70 per cent of the required water will need to be stored.

Drainage area: From Willow Creek 95 square miles, Norwegian Creek, 65 square miles. Total 160 square miles.

Elevation of drainage area: 4,700 to 10,400 feet.

Soil: Very fertile sandy loam, rich in lime.

Topography: High bench generally flat with some rolling areas. Free from trees, brush, stumps or rocks.

Irrigable area: 14,819 acres net.

Altitude: 4,500 feet.

Growing season: 125 days.

Precipitation: Annual mean 14.31 inches.

Duty of water: Net delivered to the land 1.25 acre-feet per acre, at head of main canal 1.97 acre-feet per acre, in the reservoir 2.14 acre-feet per acre. Maximum demand (July) 50 per cent.

Main Canal: Capacity 235 second-feet. Total length 17 miles, 16,604 feet of flume. Three tunnels of a total length of 1161 feet; 6,240 square yards concrete canal lining.

Laterals: 45 miles.

Reservoir and Dam: Reinforced concrete arch dam, length crest 500 feet, maximum height 122 feet, area flooded 1,318 acres, capacity 32,827 acre-feet. Canal intake is 60 feet above base of the dam. Storage lost below the canal intake 513 acre-feet.

Costs: The total cost of the project is estimated to be \$836,783 or \$56.47 per acre.

Bond Issue: The estimated amount of the bond issue to cover cost of construction, first three years' interest and 15 per cent discount on the face value of the bonds, is \$1,248,929.85. Estimated maintenance cost \$1.00 per acre per year.

Silver Irrigation District.

Lewis and Clark County.

Project No. 19. This project includes a gross area of about 15,000 acres covering two separate units, one in the northwest corner of Helena valley eight miles from Helena, and the other at Silver 8 miles farther northwest. The land in both units lies well for irrigation, the soil is fertile and marketing and transportation facilities are quite favorable.

The proposed source of water supply is from Little Prickly Pear and Canyon Creeks, using direct flow supplemented by storage. A gravity system of distribution is proposed. The field investigations and surveys have been completed by the Commission's engineers, but the report has not yet been issued. Eight reservoir sites were surveyed, but not all of these were found to be feasible.

Organization.

Petition filed: May 14, 1921.

Gross area: 15,160 acres.

Total number of land owners: 59.

Gross area signed up, 8,238 acres, or 54 per cent.

Number of land owners signed up: 38, or 64 per cent.

Date deposit was made: July 15, 1921.

Amount of deposit: \$300.00.

Date of field investigation: July 21 to November 5, 1921.

Cost of investigation: \$300.00.

Cost per acre (gross): \$0.020.

Report: Not yet issued.

Personnel.

Correspondent: M. Max Goodsill, Helena, Montana.

General Features.

Altitude upper unit: 4,300 feet.

Altitude lower unit: 3,900 feet.

Precipitation: 13.30 inches annually.

Growing season: 141 days.

Topography: Gently sloping valley lands.

Soil: From clay silt loam to gravely loam.

Duty: 1.75 acre-feet per acre delivered.

Brackett Creek Irrigation District.**Park County.**

Project No. 20. This project is located on a strip of rolling bench land on the west side of the Shields River Valley near Clyde Park. It is proposed to reservoir Brackett Creek and divert the water onto the land by a gravity system of canals and laterals.

The surveys and field investigations are being prosecuted at the present time and the final report and recommendations will be filed this winter.

Organization.

Petition filed July 23, 1921.

Gross area of the district 32,320 acres.

Total number of land owners within the district:
76.

Total acreage signed to the petition 23,200 acres,
or 71.78 per cent.

Total owners signed to the petition: 46, or 60.53
per cent.

Date deposit was made: July 12, 1921.

Amount of the deposit: \$500.00 .

Personnel.

Secretary of local organizations: J. H. Quade,
Chadborn, Montana.

Attorneys: Miller & O'Connor, Livingston, Montana.

General Features.

Source of water supply: Flood waters from
Brackett Creek.

System: Storage with gravity distribution system.

Drainage area: 58 square miles.

Soil: Sandy loam.

Topography: Rolling, free from trees, stumps,
brush or boulders.

Altitude: 5,000 feet.

Reservoir: Located on Brackett Creek. Its capacity will be limited to the water supply.

BOOK II PART V

BOARD *of* RAILROAD COMMISSIONERS

Interstate Commerce Commission Cases;
Informal Orders, Opinions, Conference
Rulings, Statistics, Administration, etc.

Proceedings Before the Interstate Commerce Commission

Section 4375, Revised Codes 1907, gives this Board the authority and makes it its duty to protect the State of Montana in matters of interstate commerce, in the following language:

“And it shall be within the province of the Board to entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the State of Montana, or any point therein, in the way of rates for the transportation of freight or passengers from points without the state, to points within the state and vice versa; and in proper cases where it appears that the United States Interstate Commerce Commission law has been violated, it is hereby made the duty of said Board to make complaint to the Interstate Commerce Commission of the United States and to aid such Commission in any investigation it may make * * * and to protect the interest of the people.”

During the year covered by this report, some of the most important transportation problems in which Montana is directly interested, have been the subject of investigation and hearings before the Federal body; and while the results thus obtained have not in some cases been all that was desired, this Board feels that a measure of benefit has accrued sufficient to warrant the efforts made by loyal members of the state's principal industries, in assisting the Board in the preparation and presentation of evidence and arguments before the Interstate Commerce Commission in the very vital matters of freight rate adjustments.

MONTANA RATES AND FARES.

Following the decision of this Board in report and order No. 295, August 31st, 1920, reported in 13 Montana Utilities Reports at page 71, wherein this Board denied the application of all the carriers operating in the State of Montana for a twenty per cent (20 per cent) horizontal advance in all intrastate passenger fares and charges, the carriers operating in Montana commenced proceedings under Section 13, of the Interstate Commerce Act, having for their end an order of the Interstate Commerce Commission advancing Montana passenger rates and fares and allied charges to the same level as the rates and fares established on such traffic, interstate. This Board made every protest within its power against the advance so demanded, but

notwithstanding, and in conformity with the result in every other like case affecting state rates, the Interstate Commerce Commission advanced passenger fares and allied charges as prayed for in the carriers' application, and such charges have been in effect within the State of Montana, since the 2nd day of March, 1921, by virtue solely of the Interstate Commerce Commission's order. The report and order of the Commission follows:

INTERSTATE COMMERCE COMMISSION

No. 11860.

MONTANA RATES AND FARES.

"IN THE MATTER OF INTRASTATE RATES AND FARES
OF THE CHICAGO, BURLINGTON & QUINCY RAIL-
ROAD COMPANY AND OTHER CARRIERS IN THE
STATE OF MONTANA.

Submitted December 15, 1920. Decided January 11, 1921.

Certain fares and charges required by state authority to be maintained by the respondent steam railroads within the state of Montana found to be lower than the corresponding interstate fares and charges authorized in Ex Parte 74, *Increased Rates*, 1920, 58 I. C. C., 220, and to be unduly preferential of intrastate passengers, unduly prejudicial of interstate passengers, and unjustly discriminatory against interstate commerce. Fares and charges prescribed which will remove such preference, prejudice, and discrimination.

E. G. Toomey for Board of Railroad Commissioners of the State of Montana.

Norris, Hurd & Rhodes and W. B. Rhoades for Montana Lumber Manufacturers' Association.

Bruce Scott, O. W. Dynes, E. C. Lindley, H. A. Scandrett, A. H. Lossow, C. W. Bunn, D. F. Lyons, M. S. Gunn, and B. W. Scandrett for respondent carriers.

REPORT OF THE COMMISSION.

By the Commission:

"In Ex Parte 74, *Increased Rates*, 1920, 58 I. C. C., 220, we authorized all steam railroads subject to our jurisdiction serving the mountain-Pacific group, as described in the report in that case and in which the State of Montana is located, to make general increases in their interstate rates, fares and charges in that group, including a 25 per cent increase in freight rates; a 20 per cent increase in passenger fares; a 20 per cent increase in excess-baggage charges, with the proviso that where stated as a percentage of, or dependent upon, passenger fares, the increase in the latter would automatically effect the increase in the excess-bag-

gage charges; a 20 per cent increase in milk and cream rates; and a surcharge upon passengers in sleeping and parlor cars of 50 per cent of the charge for space in such cars, to accrue to the rail carriers. The carriers increased their interstate rates, fares, and charges in the mountain-Pacific group conformably to that authorization, effective August 26, 1920. They also made increases of 20 per cent in their interstate charges for handling newspapers on passenger trains, charges for parking special baggage cars, and in their minimum interstate charges for movements of special passenger and baggage cars and special passenger trains, which increases were not included in the authorization granted in Ex Parte 74.

"Upon applications of the carriers to the Board of Railroad Commissioners of the state of Montana, hereinafter referred to as the Montana commission, for authority to make increases in their intrastate rates, fares, and charges in the state of Montana, similar to those authorized by us in Ex Parte 74, as well as in the charges for handling newspapers, for parking special baggage cars, and for movements of special cars and trains, above mentioned, the Montana commission entered its reports and orders Nos. 294 and 295 of August 10 and August 31, 1920, respectively, granting the application for a 25 per cent increase in freight rates; denying upon its merits the application for permission to impose a surcharge upon passengers in sleeping and parlor cars; and denying, without prejudice to their renewal, all the other applications for increases. The Montana commission stated that under the state law it was without power to authorize increases in the passenger fares; and the increases in milk and cream rates were denied at that time because it was thought that such increases should be considered in connection with a pending application for increases in the express rates on milk and cream.

"The state law which, it was stated, restricted the power of the Montana commission to authorize an increase in passenger fares, is an act of the legislative assembly of Montana approved by the governor March 4, 1905, by which it is provided, in substance, that on and after April 1, 1905, the maximum charge for passenger transportation in the state should be 3 cents per mile. There is some question as to whether the provisions of this act were repealed by implication by Chapter 37 of the laws of Montana of 1907, establishing the Montana commission, but in the absence of any judicial expression on this point the Montana commission feels that its power in connection with passenger fares is limited by the 3-cent fare law.

"Intrastate passenger fares in Montana are, and for a number of years have been, based upon 3 cents per mile and, therefore, that portion of the Director General's General Order No. 28 establishing a basis of 3 cents per mile for passenger fares generally throughout the country did not result in a change of the Montana intrastate fares. The interstate passenger fares in the group in which Montana is situated, which became effective August 26, 1920, are based upon 3.6 cents per mile. The excess-baggage rates in this group, both interstate and intrastate, were and are made dependent upon the passenger fares, the rates per 100 pounds of excess baggage being the same wherever the interstate and intrastate fares are the same, but the increase of the interstate passenger fares on August 26, 1920, automatically resulted in higher excess-baggage charges, while the intrastate excess-baggage charges remained unchanged.

"Subsequent to the reports and orders of the Montana commission, above referred to, a petition was filed with us by or on behalf of all the steam railroads operating in Montana subject to our jurisdiction, seeking relief in accordance with the provisions of section 13 of the interstate commerce act with respect to passenger fares, excess-baggage rates, charges for handling newspapers on passenger trains, charges for parking special baggage cars, minimum charges for movements of special passenger and baggage cars and special passenger trains, and surcharges upon passengers in sleeping and parlor cars. In view of the indication in the reports and orders of the Montana commission that the milk and cream rates would be considered in connection with the proposed increased express rates, the carriers do not at this time bring in issue the rates on those articles. Pursuant to the petition above mentioned this investigation was instituted by us. All of the railroads subject to our jurisdiction operating within the state of Montana were made respondents, and the governor of Montana, the Montana Commission, the respondent carriers, and the general public were given due notice. A hearing has been held and the views of the parties in interest have been presented to us on briefs.

"The Montana Lumber Manufacturers' Association intervened at the hearing in opposition to an increase in the intrastate rates, fares, and charges.

"No evidence is before us as to the relationship between interstate and intrastate excursion, convention, and other fares for special occasions; commutation and other multiple forms of tickets; extra fares on limited trains; or club-car charges. Therefore, the term "fare" as used herein will refer only to standard local or interline fares. Also, our findings will be restricted to passenger fares, excess-

baggage charges, and surcharges upon sleeping and parlor car passengers upon steam railroads, as no specific increases in similar fares or charges of electric lines or in charges of any carriers for handling newspapers on passenger trains, for parking special baggage cars, or for movements of special passenger or baggage cars, or special passenger trains, were approved by us in Ex Parte 74.

"The existence of the lower basis of passenger fares and excess-baggage charges, and the absence of sleeping and parlor car surcharges in the state of Montana make it possible for interstate passengers to buy separate tickets for that portion of their journey within the state, resulting in lower total charges for the through transportation than would accrue at the through interstate fares and charges, which latter are paid by other passengers riding on the same trains and cars who do not avail themselves of the opportunity to obtain the benefit of the lower intrastate basis. This practice, which it is very difficult to prevent, not only results in the direct reduction of the carriers' revenues, but reduces the amount of the war taxes paid by passengers, causes additional expense to the carriers, and gives rise to much dissatisfaction among, and difficulty with, their patrons. Cities and towns located outside of Montana are prejudiced and points in Montana with which they compete are preferred by reason of the lower basis of fares and charges applicable intrastate than interstate. For instance, from Paradise, Mont., the distance to Spokane, Wash., is 186.1 miles, and the interstate fare \$6.71; from Paradise to Butte, Mont., the distance is 190.8 miles and the intrastate fare is \$5.73.

"The respondents presented no figures showing the relative expense of operation interstate and intrastate, but they testified generally that owing to the shorter hauls, and lighter volume of traffic intrastate than interstate, the cost per passenger-mile for intrastate operation was higher.

"The respondent steam carriers operate a total mileage of 42,058.25 miles, of which 5,290.73 miles are in the state of Montana. Exhibits filed by the respondents show that if the increases in passenger fares, excess-baggage charges, and the surcharge upon sleeping and parlor car passengers authorized by us in Ex Parte 74 were applied to the actual intrastate passenger traffic in Montana, for the year ended June 30, 1920, the result would have been increases of \$896,361.90 in passenger revenue, \$7,944.68 in excess-baggage revenue, \$89,154.53 in surcharges upon passengers in sleeping cars, and \$13,828.29 in surcharges upon passengers in parlor and chair cars over the revenues received. Increases in intrastate passenger fares similar to

those authorized by us in Ex Parte 74 have been made in the states of Washington, Oregon, Idaho, Wyoming and South Dakota.

"Intrastate passengers are transported in the same trains and cars as interstate passengers and receive the same service. The record discloses substantially no difference in the conditions affecting interstate and intrastate passenger travel in Montana.

"For the state of Montana and the Montana commission it is contended that section 13 of the interstate commerce act, in so far as it gives us, or attempts to give us, power to prescribe changes in intrastate rates in Montana fixed by authority of the state is unconstitutional; and that in any event, in making orders under section 13, we are restricted to instances in which it is shown that particular individuals or localities in intrastate commerce are unduly and unreasonably preferred to the undue and unreasonable prejudice of particular individuals or localities in interstate commerce. Similar contentions were made and discussed in Rates, Fares, and Charges of N. Y. C. R. R. Co., 59 I. C. C., 290, and Intrastate Rates within Illinois, 59 I. C. C., 350, herinafter referred to as the New York and Illinois cases, respectively, and it seems unnecessary further to enlarge upon that discussion here.

"The Montana commission further contends that until it is judicially determined whether the power to authorize increases in the present passenger fares and charges in the state of Montana is retained by the legislative assembly or has been reposed in the Montana commission, and until the body having the power has determined the applications of the carriers for increases upon their merits, that we are without jurisdiction in the premises. It appears, however, that increases in the intrastate fares and the charges here under consideration were prevented by the state of Montana; that to that extent the present fares and charges were made or imposed by authority of the state; and, therefore, that the carriers were within their rights under the interstate commerce act in seeking relief from us.

"The issues here presented relating to passenger fares and surcharges upon passengers in sleeping and parlor cars are in all respects similar to those presented in the New York and Illinois cases. The issue with respect to excess-baggage charges is the same as that presented in the case first mentioned.

"Following the New York and Illinois cases, and upon this record, we are of opinion and find that the increases in standard passenger fares and excess-baggage charges made by the respondent steam railroads under the authority

granted in Ex Parte 74, and now in effect within the group considered in this proceeding, result in reasonable passenger fares and excess-baggage charges for interstate traffic within that group, and that the failure of said respondents to increase the standard intrastate fares and charges correspondingly within the state of Montana has resulted and will result in intrastate fares and charges lower than the corresponding interstate fares and charges, in undue prejudice to passengers traveling in interstate commerce within the state of Montana and between points in the state of Montana and points in other states; in undue preference of, and advantage to, passengers traveling intrastate within the state of Montana; and in unjust discrimination against interstate commerce.

"We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said standard intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made by said respondents as aforesaid in standard interstate passenger fares and excess-baggage charges.

"We further find that the surcharges made by said respondent steam railroads under Ex Parte 74, and now in effect within the group considered in this proceeding, result in reasonable charges upon passengers so traveling in interstate commerce within that group, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Montana has resulted and will result in intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons so traveling in interstate commerce within the state of Montana and between points in the state of Montana and points in other states; in undue preference and advantage to persons so traveling intrastate in Montana; and in unjust discrimination against interstate commerce.

"We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid upon passengers so traveling in interstate commerce.

"We further find that, whether the aforesaid passenger fares, excess-baggage charges, or surcharges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

"These findings are without prejudice to the rights of the authorities of the state of Montana, or of any other interested party, to apply in the proper manner for a modification of our findings and order as to any specific intrastate fare or charge on the ground that the latter is not related to the interstate fares and charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

Eastman, Commissioner, dissents.

ORDER.

"At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 11th day of January, A. D. 1921.

"IN THE MATTER OF INTRASTATE RATES AND FARES OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY AND OTHER CARRIERS IN THE STATE OF MONTANA.

"This case being a proceeding instituted by the Commission upon petition filed, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"It is ordered, That the carriers by steam railroad parties to this proceeding, namely: Chicago, Milwaukee & St. Paul Railway Company; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Great Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; The Gilmore & Pittsburgh Railroad Company, Ltd.; Northern Pacific Railway Company; The Montana Western Railway Company; Montana, Wyoming & Southern Railroad Company; Oregon Short Line Railroad Company; Billings & Central Montana Railway Company; Montana Southern Railway Company; and White Sulphur Springs & Yellowstone Park Railway Company; according as they respectively participate in the transportation, be and they are hereby, notified and required to cease and desist from practicing the undue prejudice, undue preference and advantage, and unjust discrimination found in said report to exist in the relation of interstate and intrastate passenger fares and excess-baggage charges, and to establish, put in force, and maintain passenger fares and excess-baggage charges for

the transportation of passengers and their baggage in intrastate commerce within the state of Montana which shall exceed the fares and charges of said carriers now in force and applicable to such transportation in amounts corresponding with the increases heretofore made by said carriers and now in effect under Ex Parte 74, referred to in said report, in such carriers' passenger fares and excess-baggage charges for the transportation of passengers and their baggage in interstate commerce within the state of Montana and between points in the state of Montana and points in other states.

"It is further ordered, That said carriers according as they respectively participate in the transportation be, and they are hereby, notified and required to cease and desist from practicing the undue prejudice, undue preference and advantage, and unjust discrimination found in said report to exist in the relation of interstate and intrastate charges upon passengers traveling in sleeping cars and in parlor cars, and to establish, put in force, and maintain surcharges upon passengers traveling in sleeping cars and in parlor cars in intrastate commerce within the state of Montana, which shall correspond with the surcharges heretofore made by said carriers and now in effect under Ex Parte 74, upon passengers traveling in interstate commerce within the state of Montana and between points in the state of Montana and points in other states.

"It is further ordered, That nothing contained herein shall be constructed as either authorizing or requiring said carriers, or any of them, to change in any manner or to any extent, the commutation fares, or other fares for special occasions, or charges upon excess baggage carried in connection with any of the said fares, or charges for handling newspapers on passenger trains, or charges for parking special baggage cars, or minimum charges for movements of special passenger or baggage cars or special passenger trains as more fully described in the report herein, or any of said fares or charges, applicable to intrastate commerce within the state of Montana.

"It is further ordered, That this order shall take effect on or before March 2, 1921, upon notice to this Commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and remain in force until the further order of the Commission.

"And it is further ordered, That a copy of this order be served upon each of the carriers named in the second paragraph of this order.

By the Commission.
(Seal)

George B. McGinty,
Secretary."

The Butte, Anaconda and Pacific Railway Company, which was at all times a respondent to the proceedings before the Interstate Commerce Commission in Docket No. 11,860, failed to introduce in the hearing on the 15th day of November, 1920, evidence dealing specifically with its character or the nature of its operations, and as a consequence the order immediately above, which applies only to carriers by steam railroad, was not directed against the Butte, Anaconda and Pacific Railway Company. This carrier subsequently obtained a similar order in the same docket, and increased rates on its line were to have gone into effect on or before June 10th, 1921. Such order follows:

No. 11860.

MONTANA RATES AND FARES.

"IN THE MATTER OF INTRASTATE RATES AND FARES OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY AND OTHER CARRIERS IN THE STATE OF MONTANA.

Submitted April 11, 1921, Decided May 3, 1921.

Findings the same as those made in the former report herein, 69 I. C. C., 61, with reference to standard intrastate passenger fares and excess-baggage charges, in the state of Montana, of the respondent steam carriers, made with respect to standard intrastate passenger fares and excess-baggage charges, in the state of Montana, of the Butte, Anaconda & Pacific Railway Company.

Warren Nichols for Butte, Anaconda & Pacific Railway Company.

No other appearances.

REPORT OF THE COMMISSION ON FURTHER
HEARING.

By the Commission:

"By the former report in this case, 60 I. C. C., 61, and the order issued in connection therewith, the steam carriers respondent were authorized and directed to make increases in their intrastate standard passenger fares and excess-baggage charges, and to make a surcharge upon intrastate passengers in sleeping and parlor cars, in the state of Montana, corresponding to the increases made in their interstate standard passenger fares and excess-baggage charges, and to the surcharges made upon interstate passengers in sleeping and parlor cars, respectively, in the mountain-Pacific group, under authority granted in Ex Parte 74, Increased Rates, 1920, 58 I. C. C., 220, in order to remove unjust discrimination against interstate commerce which was found to exist. The effective date of our order was March 2, 1921, and in conformity therewith

the steam carriers respondent increased their intrastate standard passenger fares which had formerly been based upon 3 cents per mile, the maximum permitted by state authority, to a basis of 3.6 cents per mile; increased their intrastate excess-baggage charges; and established surcharges upon intrastate passengers in sleeping and parlor cars.

"The Butte, Anaconda & Pacific Railway Company has at all times been a respondent to this proceeding, but as it files its annual reports with us as an electric line, and as no evidence dealing specifically with its character or the nature of its operations was introduced at the former hearing, the order, which applies only to carriers by steam railroad, was not directed against it. The result is that it still maintains its intrastate passenger fares upon a basis of 3 cents per mile, and also has been unable to increase its intrastate excess-baggage charges. It does not transport passengers in sleeping or parlor cars. Its interstate freight and passenger rates and excess-baggage charges were increased following Ex Parte 74, and the Montana commission permitted its intrastate freight rates to be correspondingly increased.

"Upon petition of the Butte, Anaconda & Pacific, which will hereinafter be referred to as the petitioner, in which it asks for a further hearing with a view to securing the same relief with respect to its Montana intrastate passenger fares, and excess-baggage charges as was accorded to the steam carriers respondent, the case was reopened. A further hearing has been had and the case is submitted upon the record without briefs or oral argument.

"The petitioner was incorporated in 1892, and its main line from Butte to Anaconda, Mont., 26 miles, was completed in 1894. Its line has since been extended 23 miles west of Anaconda to Southern Cross, Mont., and it operates several short branch lines. Prior to 1912 the petitioner operated entirely by steam power. In 1912 and 1913 its line from Butte to Anaconda was equipped for electrical operation and has since been so operated. The petitioner also operates by electric power a short branch from Anaconda to Stuart, Mont., which it leases from the Northern Pacific. The remainder of its line is still operated by steam power. It handles a large volume of freight traffic and maintains regular passenger schedules between points on its line. Its witness testified that it operates just as any steam railroad, with standard steam equipment, except that on the electrified portions of its line it uses electric instead of steam locomotives.

"The petitioner customarily participates in through routes and joint rates and fares on interstate and intrastate traffic with its steam-line connections. A letter of record received subsequent to the hearing, however, indicates that since the steam carriers have increased their intrastate fares in conformity with our former findings herein, in which increases the petitioner was not authorized to participate, they have cancelled their joint intrastate passenger fares with the petitioner so that the fares at present in effect between points on petitioner's line and points on other lines in the state are combinations made by adding to the steam lines' fares the petitioner's local fares based on 3 cents per mile to or from the junction points. Portions of the petitioner's line are paralleled by steam lines, with the result that passengers may now travel between certain points over petitioner's line at lower charges than apply between the same points over a steam line.

"An exhibit of petitioner shows that if its intrastate passenger fares and excess-baggage charges were increased correspondingly to those of the steam lines, as authorized by our former order herein, and the increased fares and charges applied to its intrastate passenger traffic for the year ended June 30, 1920, the result would be an increase of \$22,365.12 in passenger revenue, and \$164.05 in excess-baggage revenue, over the revenues actually received.

"The petitioner adopts as its own, in so far as it is applicable, the evidence introduced in behalf of respondents at the former hearing, and discussed in the former report, as to the discrimination against interstate commerce growing out of the application of lower passenger fares and baggage charges to intrastate traffic than to interstate traffic. In *South Carolina Fares and Charges*, 60 I. C. C., 290, we held that the Piedmont & Northern Railway, an electric line, should be dealt with the same as the steam carriers respondent in that case. Petitioner contends that it is entitled to no less favorable treatment.

"No reason appears why the fares and charges of petitioner should be upon a lower basis than those applicable on the steam lines respondent. Its costs of operation in the past few years have increased in substantially the same ratio as those of the steam lines. It is a member of the American Association of Short Line Railroads and is a party to wage-scale agreements subject to the jurisdiction of the Railroad Labor Board.

"In their answers to the petition for rehearing the Montana commission and the Montana Lumber Manufacturers' Association, intervener, offered no objection to the granting thereof, but stated that they wished their op-

position to the position of the carriers, and their objections and arguments in support thereof made at the former hearing, to be understood as applying with equal force to the contentions of petitioner.

"Following the former report in this case, and upon the whole record, we are of opinion and find that the increases in standard passenger fares and excess-baggage charges made by the respondent steam railroads under the authority granted in Ex Parte 74, and now in effect, and the corresponding increases made by the petitioner, and now in effect within the mountain-Pacific group, result in reasonable passenger fares and excess-baggage charges for interstate traffic within that group, and that the failure of the petitioner to increase its standard intrastate passenger fares and excess-baggage charges correspondingly within the state of Montana has resulted and will result in intrastate fares and charges lower than the corresponding interstate fares and charges, in undue prejudice to passengers traveling in interstate commerce within the state of Montana, and between points in the state of Montana and points in other states; in undue preference of, and advantage to, passengers traveling intrastate within the state of Montana; and in unjust discrimination against interstate commerce.

"We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said standard intrastate passenger fares and excess-baggage charges which will correspond with the increases heretofore made by said respondents as aforesaid, and now in effect, in standard interstate passenger fares and excess-baggage charges.

"We further find that, whether the aforesaid passenger fares and excess-baggage charges of the petitioner pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by petitioner under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

"These findings are without prejudice to the rights of the authorities of the state of Montana, or any other interested party, to apply in the proper manner for a modification of our findings and order as to any specific intrastate fare or charge on the ground that the latter is not related to the interstate fares and charges in such a way as to contravene the provisions of the interstate commerce act.

"An appropriate order will be entered."

ORDER.

"At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C. on the 3rd day of May, A. D. 1921.

No. 11860. Montana Rates and Fares.

In the Matter of Intrastate Rates and Fares of the Chicago, Burlington & Quincy Railroad Company and Other Carriers in the State of Montana.

"This case coming on for further consideration and having been further heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and filed a report on further hearing containing its findings of fact and conclusions thereon, which said report, and the report heretofore made and filed by the Commission in this case on January 11, 1921, are hereby referred to and made a part hereof:

"It is ordered. That the Butte, Anaconda & Pacific Railway Company, according as it participates in the transportation, be, and it is hereby, notified and required to cease and desist from practicing the undue prejudice, undue preference and advantage, and unjust discrimination found in said report to exist in the relation of interstate and intrastate passenger fares and excess-baggage charges, and to establish, put in force, and maintain passenger fares and excess-baggage charges for the transportation of passengers and their baggage in intra-state commerce within the state of Montana, which shall exceed the fares and charges of said carrier now in force and applicable to such transportation in amounts corresponding with the increases heretofore made by said carrier and now in effect under Ex Parte 74, referred to in said report, in such carrier's passenger fares and excess-baggage charges for the transportation of passengers and their baggage in interstate commerce within the state of Montana and between points in the state of Montana and points in other states.

"It is further ordered, That nothing in this order shall be construed as requiring the Butte, Anaconda & Pacific Railway Company to establish, put in force, or maintain any rate, fare or charge, for the transportation of passengers or property in intrastate commerce, which is greater than its corresponding rate, fare, or charge applicable to the transportation of passengers or property in interstate commerce from, to, or at the same points, in effect on the date of this order, or greater than its corresponding rate, fare, or charge contemporaneously in effect and applicable to the transportation of passengers or property in interstate commerce.

"It is further ordered, That nothing contained herein shall be construed as authorizing or requiring the Butte, Anaconda & Pacific Railway Company to change in any manner or to any extent, the commutation fares, or other fares for special occasions, or charges upon excess baggage carried in connection with any of the said fares, applicable to intrastate commerce within the state of Montana.

"It is further ordered, That this order shall become effective on or before June 10, 1921, and that the Butte, Anaconda & Pacific Railway Company shall comply therewith upon not less than five days' notice to this Commission and to the general public by filing and posting tariffs in the manner prescribed in section 6, of the interstate commerce act, and shall remain in force until the further order of the Commission.

"And it is further ordered, That a copy of this order be served upon each of the carriers upon which the former order in this case was served and also upon the Butte, Anaconda & Pacific Railway Company.

By the Commission.

(Seal)

George B. McGinty.
Secretary."

Subsequent to the issuance of the order in favor of the Butte, Anaconda and Pacific Railway Company, the Interstate Commerce Commission apparently reconsidered its action, for on the 10th day of June, 1921, it entered the following order:

No. 11860.

MONTANA RATES AND FARES.

"IN THE MATTER OF INTRASTATE RATES AND FARES OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY AND OTHER CARRIERS IN THE STATE OF MONTANA.

"This case coming on for further consideration, and good cause appearing therefor,

"It is ordered, That the effective date of the order entered herein on May 3, 1921, be, and it is hereby, postponed from June 10, 1921, until the further order of the Commission.

By the Commission:

(Seal)

George B. McGinty,
Secretary."

Since that time, the Butte, Anaconda and Pacific Railway Company has made numerous efforts to obtain a twenty per cent (20 per cent) advance in intrastate rates, both before this Board and the Interstate Commerce Commission. This Board, of course, rejected such application as it has all like applications, and the Interstate Commerce Commission has likewise refused to annul its postponement order of June 10th, 1921, apparently for jurisdictional reasons. On the 10th day of November, 1921, the Interstate Commerce Commission notified the applicant of its present position as follows:

"In further reference to your letter of October 31, in connection with Docket No. 11860, in which you advise that the Butte, Anaconda & Pacific has filed a tariff, effective November 15 making a 20 per cent increase in its local interstate passenger fares and asking if anything further will be required of that road as a condition precedent to an order directing it to increase its passenger fares and charges as provided in the order of May 3, 1921:

"This matter has had further consideration and we are of opinion that in the present state of the record the Commission may not, under the law, make the order you desire. It is our opinion that before such an order can be made, it will be necessary for the Butte, Anaconda & Pacific to file a new petition under section 13, bringing in issue the relationship between the inter- and intrastate fares and charges which will exist on and after November 15, and that a further hearing will be necessary.

"In order that you may be fully informed of the Commission's position, I quote from a memorandum on the subject by our Chief Counsel, in whose views I concur:

'According to my understanding of the provisions of paragraphs (3) and (4) of section 13, of the Act, it is not proper for the Commission, in any case, to make an order requiring intrastate rates or fares to be changed until after it has given the notice and held the hearing mentioned in said paragraphs and ascertained upon competent evidence that the change is necessary to remove an unjust discrimination against interstate or foreign commerce which the state authorities decline to permit to be removed by changes in the intrastate rates or fares. In other words,

the Commission may not properly make an order which interferes with the authority of state officials except where such action is rendered necessary by the mandate contained in said paragraph (4) and by the action or refusal to act of such officials. Before coming to the Interstate Commerce Commission for permission to increase intrastate rates or fares for the purpose of removing unjust discriminations against interstate or foreign commerce, carriers must endeavor to obtain such permission from the appropriate state authority, and this is especially true where the discriminations result from voluntary action on the part of the carrier.

In my opinion the requirements of paragraphs (3) and (4) are jurisdictional, and any order made by the Commission under section 13, which does not have for a basis a full compliance with those requirements may be set aside by a court upon the ground that it is an unauthorized exercise of power.'

Yours very truly,
(Signed) Mark W. Potter,
Commissioner."

STATE RATE LITIGATION.

On the 27th day of January, 1921, the Northern Pacific Railway Company, et al., as plaintiffs, filed their bill of complaint in the United States District Court for the District of Montana against the Board of Railroad Commissioners of the State of Montana, et al (Equity Docket No. 181), and thereupon there issued out of said court, a temporary restraining order prohibiting the Board and other state authorities from interfering with the decision of the Interstate Commerce Commission in Docket No. 11860, together with an order to show cause why a temporary injunction should not issue **pendente lite**; on the same day and at the very moment the attorneys for the carriers were in the Federal Court seeking their injunction, the attorneys for the state and this Board were in the Supreme Court of the State of Montana seeking an injunction against the carriers to prevent their threatened violation, (under color of the Interstate Commerce Commission Order), of the Montana three-cent fare statute. It happened that the attorneys for the carriers were able to secure very speedy action on the part of the Federal Court, while the Supreme Court of Montana refused to hear the application in open court before 10:00 a. m., with the result that when the state's attorneys were in the

Supreme Court making their formal application, they were served with the restraining order of the Federal Court. In consequence of this action, the Supreme Court of the State of Montana refused to take jurisdiction of the cause. Subsequently, attorneys for the state conceived that the state court, could, notwithstanding the pendency of the suit in the Federal Court, take jurisdiction of the matter pursuant to the provisions of Section 266, Judicial Code, as amended in 1913. Accordingly they interviewed Judge Bourquin of the Federal Court, in order to ascertain their liability for contempt in the event application were made to the Supreme Court of the state under the section cited. After reading the statute, Judge Bourquin gave it as his view that there was no obstacle to the state court taking jurisdiction of the suit if all the provisions of Section 266, including the stay order to the state's authorities, were strictly complied with. Accordingly on January 31, 1921, application was made to the Supreme Court of the State of Montana, for leave to file an original bill in equity with the object of ultimately restraining the carriers from violating the Montana three-cent fare statute, and the court by order permitted the suit to be instituted, at the same time issuing a stay order against the state officers. This is cause No. 4806 of the Supreme Court of Montana. Thereafter, attorneys for the carriers filed their removal petition in the Supreme Court of Montana, seeking the removal of the state's cause to the Federal Court. Opposition to this petition was made by the state's attorneys on the ground that Section 266, clearly contemplated that the state's officials, having followed the conditions of the statute, were entitled to have the cause determined, first in the state court. The Supreme Court of Montana took this view and declined to enter an order for removal of the cause to the Federal Court, and did, by order, forbid the removal of said cause to the District Court. In the Federal Court thereafter, state's attorneys made application for a stay of proceedings in that court, in accord with provisions of Section 266, aforesaid, and argument thereon was had before Federal Judge Bourquin, but to this day, no formal action has been taken by the Federal District Court on the application for a stay order. The Federal Court has never taken any further step or proceedings in the suit instituted therein.

On the 14th day of February, 1921, the carriers appeared by demurrer, and later after preliminary argument, by answer to the state's complaint, and the cause was heard in full on that date by the Supreme Court of Montana. Since that time the Supreme Court of Montana has never made any decision. It seems that both the Supreme

Court of Montana and the United States District Court for Montana are unwilling to proceed further, in view of the pendency of the Wisconsin Passenger Fare case in the Supreme Court of the United States, and we do not hope to be able to get a decision from either of the Montana courts until the United States Supreme Court has spoken. No permanent injunction has ever issued from either the State or Federal Court and no appeal has been taken from either court.

WESTBOUND TRANSCONTINENTAL RATES.

In volume 13, Montana Utilities Reports at page 19, we reviewed the proceedings then pending before the Interstate Commerce Commission in the matter of Westbound Transcontinental Rates, noting that at the time that volume of the Montana Utilities Reports was published, decision had not been rendered by the Interstate Commerce Commission.

On the 29th day of March, 1921, the Interstate Commerce Commission rendered its decision in the proceedings. While the complaint therein to which this Board was a party, was dismissed, the decision did leave open for adjustment at some subsequent time the propriety of establishing through joint class or commodity rates, lower than the combinations of locals, from Eastern territory to sections of the Inter-mountain territory interested in securing such rates. The subject is one of transcendent importance to the State of Montana and the entire Inter-mountain territory. In order that its exact status may be clearly understood, the report and order of the Interstate Commerce Commission follows in full:

No. 10826.

INTERMEDIATE RATE ASSOCIATION.

v.

DIRECTOR GENERAL, ABERDEEN & ROCKFISH RAILROAD COMPANY, ET AL.

Submitted December 3, 1920. Decided March 29, 1921.

"Rates from points or origin east of the Rocky Mountains to so-called inter-mountain territory found not to be unreasonable, unduly prejudicial, or otherwise unlawful. Complaint dismissed.

J. B. Campbell and C. O. Bergan for complainant.

S. H. Love, W. S. McCarthy and H. W. Prickett for Commercial Club and Chamber of Commerce of Salt Lake, Traffic Bureau of Utah, and Traffic Service Bureau of Utah; Warren Stoutnour for Public Utilities Commission of Utah; George B. Graff for Boise Commercial Club and

Boise Chamber of Commerce; A. L. Freehafer and Leonard Way for Public Utilities Commission of the State of Idaho; J. W. Goodman for Montana Freight Rate Association; H. B. Schaefer for Montana Railroad Commission; F. A. Jones for Arizona Corporation Commission and Corporation Commission of New Mexico; E. H. Walker for Reno Chamber of Commerce; Fred W. Felt for Public Utilities Commission of Nevada; W. D. Wall for San Jose Chamber of Commerce; Seth Mann for San Francisco Chamber of Commerce; E. P. Gregson for Associated Jobbers of Los Angeles and Los Angeles Chamber of Commerce; G. J. Bradley for Merchants' and Manufacturers' Association of Sacramento; Frank M. Hill for Fresno Traffic Association; S. J. Wetterick and J. D. Mansfield for Seattle Chamber of Commerce and Commercial Club; O. T. Helping for San Diego Chamber of Commerce; Helping & Campbell for Retail Dry Goods Association of the State of California; J. N. Teal and J. H. Lothrop for Portland Traffic and Transportation Association; Jay W. McCune for Tacoma Commercial Club and Chamber of Commerce; and Harry Dickinson and Dayton & Denious for Denver Transportation Bureau.

F. H. Woods, C. W. Durbrow, B. W. Scandrett, H. A. Scandrett, R. J. Hagnon, J. L. Coleman, and J. G. McMurry for defendants; and F. S. Reigel for Southern Railway Company.

REPORT OF THE COMMISSION.

"Clark, chairman:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions were filed by the parties.

"This case involves the class and commodity rates to Pacific coast cities and so-called intermountain territory from all the country east of the Rocky Mountains.' It differs from previous cases in which rates from and to these territories were considered, in that now the rates to the intermountain territory are not higher than to the coast, and there is no contention that they should be higher. The question is whether the rates to intermountain territory should be lower than to the coast, and if so to what extent. Except as noted rates are stated in cents per 100 pounds.

"Before taking up the present situation, it is well to refer to the time when, on account of coast-to-coast water competition, the carriers maintained lower rates to the coast than to intermediate points in intermountain territory. In June, 1914, the Supreme Court rendered its decision supporting the conclusions we had reached in the Intermountain Rate cases² regarding relief from the long-and-short-haul

rule of the fourth section of the act, and the carriers took in hand the making of appropriate readjustments. The Panama Canal had just been opened for traffic, injecting new features into the situation, and after the decision of the Supreme Court was announced representatives of the carriers suggested that the commodities which moved from the territory east of the Rockies to the coast might be divided into three groups, known as schedules A, B, and C.

"Schedule A included commodities on which rates had not been seriously affected by water competition and on which the rates were to be adjusted in conformity with the long-and-short-haul rule. This list comprised about 115 carload items.

"Schedule B was a list of commodities which were adapted for transportation by water and which originated in some volume on the Atlantic seaboard, but on which it was thought possible to maintain rates sufficiently high to enable the carriers to comply with our findings without serious sacrifice of revenue. On these commodities the long-and-short-haul rule was to be observed as to rates from points on and west of the Missouri River only. From Chicago, Ill., and points between Chicago and the Missouri River, the rates to intermediate points were to be made not more than 7 per cent higher than to the coast, from points east of Chicago to and including Pittsburgh, Pa., not more than 15 per cent higher than to the coast; and from points east of Pittsburgh, not more than 25 per cent higher than to the coast. This list comprised approximately 350 items.

1 It is difficult to describe the destination groups or territories by geographical boundaries, but as representative of points on the Pacific coast we may take Seattle, Wash., Portland, Oreg., and San Francisco and Los Angeles, Calif., and, as representative of points in intermountain territory, Spokane, Wash., Reno, Nev., and Phoenix, Ariz., on the west, and Butte, Mont., Salt Lake City, Utah, and Albuquerque, N. Mex., on the east.

2 *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329; *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C., 400; and *Intermountain Rate Cases*, 234 U. S., 476.

"Schedule C was a list of important commodities which originated in large volume on the Atlantic seaboard and were especially adapted for water transportation, and on which it was not thought possible at that time to maintain the then existing rates to the coast in face of the new competition via the Panama Canal. As to this list, which comprised about 90 items, the carriers asked for further hearing. Their petition was granted and hearing was held in October, 1914. As a result we authorized the establishment to the coast, on schedule C commodities, of the rates which the carriers then proposed, while the rates to intermediate points were dealt with as follows: In those instances in which the rates from the Missouri River to

the coast were 75 cents or more, the rates to intermediate points might not exceed the rates to the coast. In those instances in which the rates to the coast from the Missouri River were less than 75 cents, the rates to intermediate points might be higher than to the coast, but might not exceed 75 cents. The rates from Chicago to intermediate points might be 15 cents higher, from Pittsburgh 25 cents higher, and from New York, N. Y., 35 cents higher, than from the Missouri River. Commodity Rates to Pacific Coast Terminals, 32 I. C. C. 611, and 34 I. C. C., 13.

"This adjustment of commodity rates continued practically unchanged until March 15, 1918, when all departures from the long-and-short-haul rule in westbound transcontinental rates were removed under our decisions in Re-opening Fourth Section Applications, 40 I. C. C., 35, and Transcontinental Rates, 46 I. C. C., 236. We there found that due to conditions brought about by the war, water competition between the Atlantic and Pacific ports was no longer a compelling force, and held that the maintenance of lower commodity rates to the coast than to intermediate points unduly preferred the coast. We not only denied relief from the long-and-short-haul rule but expressed the view that the rates in certain instances at least might be graded.

"These decisions required no change in the class rates, as they were already lower to the intermediate points than to the coast. No change in schedule-A commodity rates was required, because they were in conformity with the long-and-short-haul rule, but the rates on perhaps 40 of the 115 items in schedule A were made somewhat lower to the intermediate points than to the coast. In this revision increases were made in some of the rates to the coast. Schedule B and schedule C commodity rates were made to conform to the long-and-short-haul rule. Quite substantial increases were made in some of the schedule B rates to the coast, but the schedule-C rates to the coast as a rule, were increased only to the level of the then existing rates to intermediate points. These new commodity rates, before being published, were submitted to us in fifteenth section applications, and received our approval in Transcontinental Commodity Rates, 48 I. C. C., 79, where the changes are more fully described. The carriers sought to cancel all less-than-carload commodity rates, but authority therefor was denied, and no increases were permitted except such as were necessary to bring the rates to the coast up to the level of the rates to intermediate points. All the rates were later increased in accordance with general order No. 28 of the Director General of Railroads.

"In the spring of 1918, shortly after the revised rates referred to were established, intermountain shipping interests took up with the Railroad Administration the question of graded rates for all commodities; that is, lower rates to intermountain territory than to the coast. After hearing before the Chicago Western District Freight Traffic Committee in July, 1918, the matter was referred to a joint committee, composed of the members of the San Francisco District Freight Traffic Committee and the Portland District Freight Traffic Committee, with directions to work out in detail and submit for consideration a complete system of graded rates. This joint committee will be hereinafter called the coast committee. Following extensive investigation and study, a plan of readjustment was prepared and agreed to by the members of the coast committee, and referred to the Chicago committee for consideration and transmission with recommendations to the Director General's director of traffic. In the meantime, the Director General and his director of traffic visited Spokane and indicated to its citizens that graded rates would be accorded intermountain territory. However, the Chicago committee failed to act on the coast committee plan and the director of traffic eventually took the matter out of its hands and referred it to us under section 8 of the federal control act, with a request that we give him our recommendations. Apparently because of the prospects of an early return of the roads to their owners, the request was withdrawn, but finally, at the suggestion of the director of traffic, the matter was brought to our attention by the filing of the complaint in this case.

"Complainant is a voluntary association of shippers' organizations and state commissions in intermountain territory. In terms, violations of sections 1, 2, and 3, of the act to regulate commerce are alleged; but the principal complaint is brought under section 3, namely that the Pacific Coast is given unreasonable preference, and intermountain territory is subjected to undue prejudice and disadvantage, because the commodity rates are not graded so as to afford intermountain territory the full benefit of its location nearer the east. The class rates are satisfactory to complainant. They are graded and, except for recent general increases, have been in effect for a number of years. However, as to the class rates, the complaint states:

"It may be necessary, in order to make a perfect and consistent grade of the aforementioned commodity rates, to change the volume and relation of the class rates from said eastern defined territory to said intermountain section and said Pacific coast points, and for that purpose, and that

purpose only, your petitioner herein alleges that the said class rates are unreasonable and in violation of sections 1, 2, and 3 of the act to regulate commerce.'

"The complaint also seeks the establishment of properly related joint through class rates from all the territory east of Chicago to all points in Montana, Idaho, Utah, Wyoming and New Mexico and all other points in intermountain territory which now pay combination rates.

"A hearing was had on the complaint at Salt Lake City, Utah, in November, 1919, at which shippers and commercial organizations at the terminals intervened to contest the relief sought. The coast committee plan was made part of the record and fully discussed by the parties. It had the almost unqualified support of the intermountain interests, and if adopted, would practically satisfy the complaint. The Director General and the carrier corporations vigorously opposed its adoption, and later appointed a committee of railroad traffic officials to propose a readjustment which they would be willing to make in case we should find undue prejudice against intermountain territory. Such a proposal was prepared and submitted to us late in December, 1919. It was understood by all concerned that this proposal, though submitted during federal control, was primarily on behalf of the carrier corporations, and that it looked forward to the then prospective period of private control and operation.

"The proposal of the carriers contemplated a complete readjustment of the class and commodity rates, giving effect to the grading principle; but entailed the disruption of important commodity rate relationships as between eastern points of origin and the cancellation of many commodity rates, which latter matters were beyond the original scope of the proceeding. Various eastern shippers and commercial organizations, when they became aware of the changes proposed, petitioned for leave to intervene and be heard before any action was taken on the proposal. The case was accordingly assigned for further hearing at New York, Chicago, Spokane and San Francisco, during May, 1920, and numerous shipping interests intervened and offered evidence generally in opposition to the proposal.

"Since the hearings in this case were concluded the rates have been increased, generally $33\frac{1}{3}$ per cent, in accordance with **Increased Rates, 1920**, 58 I. C. C., 220. The term 'present rates,' as used in this report and the appendixes has reference to rates in effect at the time of the hearings.

"The record shows that intermountain territory is paying the same commodity rates on most of its traffic from the

east as does the Pacific coast. Practically none of the commodity rates is graded. The items on which the carload commodity rates to intermountain territory are the same as to the coast constitute a long list, including principally, all schedule-B and schedule-C commodities. It is only on the commodities, in carloads, mainly in schedule A, and shown in Appendix No. 1 hereto, that the commodity rates are graded. Some typical examples of the grading on these commodities are shown in Appendix No. 2. It will be noted that from all the territories of origin the differences in favor of intermountain territory range from 5 to 19 cents, depending upon the volume of the rate. In each instance the difference in favor of intermountain territory is the same, or substantially the same, regardless of the point of origin. The differences in distance in favor of the principal points in intermountain territory range from 250 to 800 miles. All intermountain territory is treated practically as a unit, and generally speaking there is no further grading of rates except accidentally, where rates are made independently in western territory, or where the Mississippi River, Chicago, or St. Paul, Minn., combinations are lower than the joint through rates. In other words, as to destination points the graded rates to intermountain territory are blanketed east for several hundred miles, in many instances to points in Idaho, Utah, Montana, Arizona and New Mexico, until they meet the independently made rates in western territory or the combination rates based on Mississippi River, Chicago or St. Paul. Generally speaking, there are no joint all-rail class or commodity rates from official or southern classification territories to the west, except to the coast and to the intermountain blanket.

“There is evidence of record respecting competition between the coast and intermountain territory, offered to prove that the rates to the latter if relatively too high result in undue prejudice. There are a few commodities, such as ship chandlery, which are used at the coast and not used in intermountain territory, but, generally speaking, intermountain territory and the coast are interested in the same commodities. The fact that any improper rate relationship that might exist, would result in prejudice to intermountain territory is clear. Defendants and certain shipping interests that would be adversely affected by a change in rates contend that complainant's evidence on this point is too meager. However, thriving communities, all in the same general section of the country, striving for population, industry, and business growth, may not need elaborate evidence to show that they are entitled to relief if the rates are not properly related.

"We have seen that the present system of commodity rates is the outgrowth of water competition to the coast and the absence of such competition at the intermediate points. Complainant asks an adjustment which entirely disregards water competition and which is based solely on distance and other transportation conditions. For years the efforts of the carriers have been to confine the large list of transcontinental commodity rates to Pacific coast traffic, and generally it has been only because of the long-and-short-haul provision that the rates were extended to intermediate points. Complainant seeks to have this list reflected farther into the interior, and the rates to the interior put on a basis lower than to the coast, and to this end contends that the present rates to the coast, subject to some increases on schedule-C commodities, should be accepted as reasonable and that they should be graded down for application to intermountain territory, which method of readjustment, as we shall see, was proposed by the coast committee.

"The Pacific coast interests urge that the rates to the coast should not be graded down for application to intermountain territory, contending that substantially all the rates now reflect, and should continue to reflect, the effects of water competition. They contend further that while they can protect themselves by using the water routes almost exclusively, the rail rates should be held down in order to provide an adequate movement of loaded cars westbound to be used in the shipment of Pacific coast products eastbound; also to enable the rail carriers to secure traffic to protect their revenues and maintain their financial standing without laying burdens on other traffic to make up what they would lose by withdrawing in large part from the coast business. Although during the war period coast-to-coast water transportation was practically nonexistent, it has again manifested itself. The water rates are generally low as compared with the rail rates and considerable traffic is moving by water. At the time of the hearings the sailings from the Atlantic to the Pacific ports averaged about two per week. It is predicted that within a year or so the steamships will be moving a large tonnage, comparable with that handled prior to the war, and making serious inroads upon the revenues of the transcontinental carriers unless it should happen that the latter are then moving all the traffic they can profitably handle. The increases authorized in Increased Rates, 1920, *supra*, will tend further to divert traffic to the water lines unless they raise their rates to about the same extent. The rail carriers, as soon as they begin to feel or fear the effects of the water competition, may again petition us for fourth section relief to meet the

situation, and with that as a premise the coast cities ask us to consider whether it is desirable to readjust the rates at this time and again later. They suggest that the present structure or any structures of the kinds proposed in this case will be undermined by the ocean rates, and require radical revision, and that a readjustment in the interim will only mean two rate disturbances instead of one

"Complainant answers the Pacific coast interests by saying that although there is coast-to-coast water transportation there is no real competition; that on the part of the rail lines there is not that 'striving for something which another is actively seeking and wishing to gain,' which is the Supreme Court's definition of competition. *United States v. Union Pacific R. R. Co.*, 226 U. S., 61, 87. They contend that there is now and for an indefinite future period is likely to be, sufficient traffic for both the water lines and the rail lines and that there exists no necessity for the rail carriers trying to keep traffic away from the water lines so long as the former are receiving all they can efficiently and profitably handle.

"The Pacific coast interests contend that if we should find a revision warranted we should fix reasonable rates to the intermediate points without tying them to the rates to the coast, so that when it becomes advisable to reduce the rates to the coast to meet water competition that could be done without involving the intermediate points. They suggest that if the rates to intermediate points are at that time reasonable, and if the rates to the coast are made no lower than water competition requires and are 'reasonably compensatory for the service performed,' no undue prejudice will then be caused by the intermediate rates, and the intermountain interests can have no cause for complaint under the law.

"Defendants support the coast interests' principal contention and ask that the complaint be dismissed. They submitted a plan of revision only because they were requested to do so.

"Defendants suggest that complainant, in supporting the coast committee plan, is asking severe reductions in rates without showing that the existing rates are unreasonable. It is true, as a technical matter, that the complaint raises mainly a question of relationship, but broadly speaking the case as a whole involves the question of what would be a reasonable and nondiscriminatory adjustment of rates.

"Defendants say that the evidence respecting the reasonableness of the present rates is so meager that the record affords no ground for reducing any of them, and that there is no good reason for seriously considering the proposed

plans of readjustment. Complainant urges a broader view, namely, that the coast committee plan largely recommends itself as a reasonable one and therefore proves that the present adjustment is unreasonable. Complainant also contends that the rates to the coast during past periods of water competition must have been compensatory; that they were increased after water competition ceased; that complainant is now willing that they be further increased, particularly so far as schedule-C commodities are concerned, before being used as a basis for rates to intermountain territory; that if the base rates to the coast are reasonable, reasonable rates to intermountain territory, for hauls several hundred miles shorter, should be appreciably lower, just as the rates from Buffalo, N. Y., and Pittsburgh to the Pacific coast and intermountain territory are lower than from the Atlantic ports; and that through rates from the east to intermountain territory, as high as the combinations on the Mississippi River, Chicago, or St. Paul, must fall of their own weight if they do not grade by reasonable progression into the rates to the coast.

"We shall now consider briefly the several plans of rate revision that have been proposed.

The Coast Committee Plan.

"The coast committee plan assumes the nonexistence of rail and water competition for transcontinental traffic, the rates proposed being based on distance and other transportation conditions. The present eastern groups are retained, but the intermountain blanket is broken up. All the rates are based on a first-class rate of \$4 from the Atlantic seaboard to the Pacific coast. The various first-class rates proposed are shown in detail in Appendix No. 3. The class rates are considerably lower than those now in effect, but the more important movements are on commodity rates. All less-than-carload commodity rates are to be cancelled, resulting in substantial increases. Some of the present and proposed less-than-carload rates are shown in Appendix No. 4. Any carload commodity rates which are equal to or higher than class rates are to be cancelled. Schedule-A and some of schedule-B commodities have been the least subject to water competition. The plan, generally speaking, assumes that the rates on these commodities to the coast are reasonable, and proposes that they be graded down for application to intermediate territory, based on the relation of first-class rates. For instance, if the first-class rate from New York to Spokane is 94 per cent of the first-class rate to the coast, the commodity rates to Spokane are to be 94 per cent of the commodity rates to the coast. The changes proposed in schedule-A and schedule-B com-

modity rates are principally reductions to intermountain territory. On schedule-C commodities the plan contemplates that the rates to the coast be increased somewhat before grading in accordance with the percentage formula. Examples of proposed commodity rates are shown in Appendixes Nos. 5, 6 and 7. Taking from 600 to 700 earload shipments which moved to Salt Lake City during the first seven months of 1919, the revenue at the proposed rates to Salt Lake City would be \$522 per car, as against \$633 per car if the shipments moved to San Francisco at the proposed rates to that city, the difference between the per car earnings being \$111 for an additional haul of 745 miles through a desert and mountainous territory.

"To show that the present commodity rates to the coast are reasonable and that they should be graded down for application to intermediate territory, complainant compares the average earnings on the hypothetical shipments to San Francisco with the average earnings on all freight of the various lines operating west of Chicago. When analyzed there is little difference between the ton-mile and car-mile earnings on the hypothetical shipments and the average for all traffic on the lines selected. Complainant also points out that since our decision in **Transcontinental Rates**, *supra*, decided June 30, 1917, there have been increases in rates to the coast other than those provided in general order No. 28. The increases computed by complainant on 45 important commodities are shown below:

From—	Ranges of increase.	Averages of increase.
	Per cent.	Per cent.
Atlantic seaboard territory	44 to 93	65
Buffalo-Pittsburgh territory	33 to 83	53
Chicago territory	22 to 72	41
Mississippi River territory	5 to 56	27

"While the coast committee plan does not specifically cover all the points of destination involved in the complaint, it fixes most of the important rates. One of the few criticisms that complainant makes of this plan is that it is not fair to Idaho. As shown by Appendix No. 3, practically the same rates are proposed from eastern points to Boise, Idaho, as to Spokane; Reno, Nev., and Phoenix, Ariz., the difference in distance in favor of Boise being about 100 miles. Complainant contends, however, that the distance to Boise should be compared with that to Spokane alone, in which event the difference would be several hundred miles. At present Boise takes Spokane rates from points east of Chicago.

"Defendants vigorously oppose the grading of the rates back from the coast, resulting in reductions in many rates fixed or approved by us in previous cases. If the rates to an interior point like Salt Lake City were taken as a base and graded up to the coast there would be no such reductions. They point out that the proposed rate of \$4 from New York to the coast is 62.5 cents below the present rate. **In Railroad Commission of Nevada v. S. P. Co.**, 19 I. C. C., 238, we fixed \$3.50 as a reasonable first-class rate from New York to Reno. With the 25 per cent increase this rate became \$4.375, or 37.5 cents more than the rate here proposed to the coast, the additional distance being 244 miles, involving transportation over the Sierra Nevadas. There would also be severe reductions in rates to intermediate points. In 43 instances the commodity rates from New York to Salt Lake City would be less than the present rates to Denver, Colo. The plan would indirectly result in reductions to certain points in the middle west, especially to Denver, Missouri River points, and other points now taking combination rates based on the Mississippi River, Chicago, or St. Paul. Denver has intervened and is asking that it be given the same percentage reductions as Salt Lake City. Any reduction in rates to Denver would doubtless entail reductions to intermediate territories.

"Defendants oppose a definite relationship between commodity and class rates, which would result in the publication of commodity rates on the same articles to intermountain territory as to the coast. Although complainant assumes the nonexistence of water competition it adopts substantially the present list of commodity rates to the coast, many of which would never have existed but for water competition. Extension of this list to intermountain territory would result in many new commodity rates to points in the middle west. At present there are 666 commodity rates from St. Louis, Mo., to the coast, while there are only 428 commodity rates to Salt Lake City, 265 to Denver, and 126 to Kansas City, Mo.

"The coast committee plan was proposed during federal control. It is impossible to say what effect its adoption would have on the revenues of individual lines. The reductions in class rates would be in part compensated by the cancellation of less-than-carload commodity rates, but the reductions in carload commodity rates to intermediate territory would not be offset by the increases proposed on certain commodities to the coast, especially as the movement to intermountain territory is heavier than to the coast. However, complainant is willing to have the rates proposed by the coast committee increased if necessary. It is the

principle of the plan rather than the exact rates proposed that complainant desires to have established.

The Utah Plan.

"The Utah plan results in substantially the same rates as the coast committee plan, except for minor differences in the rates to intermountain territory. The Utah interests take as a base the coast committee first-class rate of \$3.20 from Omaha, Nebr., to San Francisco and apply it from Chicago to Reno and from Pittsburgh to Salt Lake City for substantially equal distances, considering that transportation conditions in the far west are less favorable than in the east. Similarly the rate proposed by them from Pittsburgh to Reno, is equal to the rate from Chicago to San Francisco. Rates from and to various other points are computed in a similar manner. The same rates are proposed to Phoenix, Spokane and Reno, while those to Montana common points and Globe, N. Mex., are the same as to Salt Lake City. The proposed rate from Omaha to Salt Lake City is 80 per cent of the rate from Chicago to that destination. This percentage relationship is in harmony with our decision in *Commercial Club, Salt Lake City v. A. T. & S. F. Ry. Co.*, 19 I. C. C., 218. The present rates from Chicago to Salt Lake City also divide 80 per cent west of Omaha. The commodity rates would be controlled by the class rates in the same manner as in the coast committee plan.

The Idaho Plan.

"The Idaho interests propose a mathematical plan. They take the coast committee's first-class rate of \$4 from the Atlantic to the Pacific coast and \$1.90 from Denver to Salt Lake City and with these rates as known quantities project a curve which indicates the rates for any desired distance. The plan results in a decreasing rate of progression, with the minimum spread between groups at the greatest distance. It has the advantage of grading rates in closer relation to distance but can not be adopted as a practical plan of rate making.

The Carriers' Plan.

"The carriers contend that the present rates are not unduly prejudicial. Therefore, the plan submitted by them is presented for adoption only in the event that the present rates are found unlawful. The plan presents certain questions not within the issues raised by the complaint, but it was submitted responsive to request from the examiner and was the subject of evidence at the hearings.

"The plan is based on the present first-class rates from Missouri River, Mississippi River, Chicago, Cincinnati, Ohio,

Pittsburgh and New York to Salt Lake City and on the present first-class rate from Chicago to the coast. The rates to Salt Lake City from the first three territories mentioned are those approved in **Class and Commodity Rates to Salt Lake City**, 32 I. C. C., 551, increased under general order No. 28. The rates to Spokane, Reno, and Phoenix from Chicago, Mississippi River, and Missouri River are made by adding to the Salt Lake City rates one-half of the difference between the rates to Salt Lake City and those to the Coast. The Chicago rate to the coast is graded down to obtain rates from the Mississippi and Missouri rivers, resulting in some reductions. On traffic to the coast and intermountain territory the following differentials over Chicago are proposed: From Cincinnati 25 cents; from Pittsburgh 40 cents; and from New York 65 cents. The present differentials to the coast are 12.5 cents, 25 cents, and 37.5 cents, respectively. The carriers point out that the present differential New York over Chicago on traffic to Salt Lake City is \$1.09, and that the 65-cent differential proposed is not much more than one-half of the first-class rate from New York to Chicago. In **Railroad Commission of Nevada v. S. P. Co.**, 19 I. C. C., 238, the first-class rates prescribed from Cincinnati, Pittsburgh, and New York to Reno were 15 cents, 30 cents, and 60 cents, respectively, higher than the first-class rate prescribed from Chicago. We fixed like rates to Phoenix in **Maricopa County Commercial Club v. S. F. & P. Ry. Co.**, 19 I. C. C., 257. All of these rates were increased under General Order 28. Except for such minor reductions from the middle west the proposed class rates are considerably higher than the present rates. The present first-class rates from New York to the coast and to Spokane would each be increased 27.5 cents. The present and proposed rates are shown in greater detail in Appendix No. 8.

"At present there are joint class rates from the southeast to the coast and to intermountain territory relatively the same as those applying from official classification territory. However, prior to federal control all the class rates were based on the local rates to and beyond the Ohio and Mississippi river crossings. The carriers are willing to continue joint rates to California points, but suggest the cancellation of joint rates to the north coast because the hauls to the north coast are considerably longer from the southeast than from official classification territory and because the joint rates to the north coast will have the effect of reducing rates to Montana and North Dakota, where combination rates are now applicable. The increases proposed are substantial.

"The rates from points east of Chicago to points west of El Paso, Tex., and east of Phoenix are based on the Mississippi River or El Paso combination with rates to Phoenix as maxima, and with the further provision that via Ohio River and lower Mississippi River crossings and from seaboard territory via steamship and Gulf the lowest Mississippi River combinations are to be applied as maxima. On traffic to the California coast groups G and H are to be eliminated and group-F³ rates are to apply therefrom except that group-J territory is to be extended to the Colorado-Kansas and Colorado-Nebraska state lines, with the provision, however, that the few points in Nebraska which are located on the Union Pacific northwest of Julesburg, Colo., are to be included in group J. The present rates from Texas to the north coast and to Spokane are the same as those from Chicago, the rates from both territories of origin to Spokane being lower than to the north coast. The proposed rates from Texas to the coast and to Spokane are the same, the distance being about the same. It is asserted that the rates from Chicago to Spokane are depressed to meet the St. Paul combinations.

"Defendants failed to submit a complete plan as to commodity rates, but set out specifically a few items which they consider typical. Their intention was to submit a final proposal when the principles involved are passed upon. They propose to cancel all less-than-carload commodity rates, urging that the present commodity rates are unnecessary. Practically all of them are due to water competition. There are less-than-carload commodity rates to other points in western territory, but they are limited in number. These commodity rates are generally the same to intermountain territory as to the coast. Their cancellation would result in increases ranging from 30 to 100 per cent, assuming that the proposed class rates were established. In **Transcontinental Commodity Rates**, *supra*, the carriers proposed to cancel these less-than-carload commodity rates. The question was discussed at pages 87 and 88 of the report, and the cancellation was not permitted.

"The carriers also propose the cancellation of carload commodity rates on high-grade traffic, of which drugs, medicines, and chemicals, automobiles, rubber tires, and musical instruments are said to be typical. They show that in other sections of the country the articles named

³ Group F embraces a narrow strip of territory closely adjacent to and including the Missouri River and the line of the Kansas City Southern from Kansas City to the Gulf of Mexico. Group G embraces the states of Kansas and Nebraska and also a narrow strip on the eastern border of the state of Colorado, not including the so-called Colorado common points. Group H includes most of the states of Oklahoma and Texas. Group J, generally speaking, embraces the eastern portion of Colorado except the narrow strip included in group G.

move on class rates. It is conceded for defendants that some of the articles in the list should be accorded commodity rates. The proposed cancellation would result in substantial increases. On many of the articles referred to commodity rates were prescribed by us. **City of Spokane v. N. P. Ry. Co.**, 19 I. C. C., 162, pages 180 to 217.

"It is proposed that commodity rates on agricultural and hand implements, bags, and iron and brass beds be graded between Salt Lake City and the coast in a 'normal way;' that rates on agricultural implement parts, ammunition, canned goods, bar iron and steel, iron and steel castings, fruit jars, and certain other commodities be graded only slightly, the grading to depend upon and differ with the commercial and competitive conditions that are to be met. There are no commodity rates on these articles to Salt Lake City which are not reflections of the coast rates. The rates to the coast were made either with regard to water competition or in view of local production. Specific rates on certain of these commodities are shown in Appendix No. 9. It is not proposed to grade the rates on commodities such as poultry food, stock food, silica sand, and salt. In other words, no change is proposed in the present level of these rates which, it is said, is very low.

"In determining commodity rates from points east of Chicago the carriers have taken the rates from Chicago as a base, adding thereto the same differentials for the haul from points farther east as were proposed in connection with the class rates which would apply in the absence of commodity rates. The proposed commodity rates are, therefore, controlled by the class rates, although defendants objected to that feature of the coast committee plan. The western carriers believe it unnecessary to carry the same commodity rates to the north coast from the south-east as from official classification territory. The southern lines, or at least some of them, are not in favor of the cancellation of joint rates from their territory. They desire through rates in line with those from official classification territory. There apparently is some controversy as to divisions.

"It is proposed to eliminate all carload commodity rates to Salt Lake City which are due solely to coast rates based on water competition or other special circumstances. In other words, Salt Lake City would receive commodity rates only when commercial or transportation conditions that affect Salt Lake City traffic were deemed such as to justify them. The carriers would continue combination rates from official classification territory to far western points where they now exist. In **Boston Chamber of Commerce v. A. T. & S. F. Ry. Co.**, 28 I. C. C., 230, we refused to require the

establishment of joint class rates from the east to Colorado and Utah common points.

"Defendants concede that the adoption of their plan would mean a large increase in revenue.

"The evidence in opposition to the carriers' plan deals principally with the amounts of the increases and the possible effect of the rates upon business and commercial conditions. Extensive evidence was offered to show that the present rates on several commodities, especially automobiles, rubber tires, and chewing gum, are reasonable, and the proposed rates would be unreasonable.

"Shippers at Boston, Mass., New York, Philadelphia, Pa., Richmond, Va., and various other points in seaboard territory, oppose the radical increase proposed and seek a continuance of the present rates and the rate relationships that exist between the seaboard territory and other territories. It is becoming increasingly difficult for industrial interests in the east to do business on the Pacific coast in competition with industries in the middle and far west. The rate situation is having a tendency to compel the eastern industries to erect manufacturing plants and branch houses in the coast states. While this trend is naturally objectionable to the established eastern manufacturers, the building up of the west as a manufacturing and primary distributing territory is not undesirable from the standpoint of public interest. We have little, if any power, and no inclination, to adjust rates for the purpose of retarding or promoting progress and development of a particular section, but aside from any economic considerations, if water competition is to be disregarded, there is much to be said in favor of increasing the differentials against central freight association, eastern trunk line, and New England territories. Traffic and transportation conditions would furnish justification for increasing the differentials.

"Duluth, Minneapolis, and St. Paul give their unqualified approval to the carriers' proposal, notwithstanding the severe increase that would be entailed, because it would increase the disadvantages under which their eastern competitors are now laboring in shipping to the far west. Kansas City, St. Louis, and Indianapolis, Ind., would receive somewhat the same advantages over eastern competitors as would Duluth, Minneapolis, and St. Paul, but they vigorously oppose the proposal because of the increased rates that they would be charged. Rochester, N. Y., in seaboard territory, 69 miles east of Buffalo, N. Y., protests the proposed increased differentials for seaboard territory over Buffalo-Pittsburgh territory, and asks that Rochester be taken out of the seaboard territory, if the carriers' pro-

posal is adopted, and be given rates which will reflect its proximity to Buffalo. Des Moines, Iowa, objects to being continued in the Mississippi River territory, and asks that it be given rates that more nearly represent its location. Shippers at points in the southeast oppose the cancellation of their class and commodity rates to the north coast.

"The Whitaker-Glessner Company, engaged in the manufacture of black and galvanized sheets, range boilers, and various other articles of iron and steel, at Portsmouth, Ohio, in Pittsburgh territory, 107 miles east of Cincinnati, protests the proposed increased differential over Chicago territory and asks that it be accorded a rate less than the Pittsburgh rate and one that will reflect its closer proximity to Chicago.

"The Cambria Steel Company at Johnstown, Pa., in seaboard territory, 75 miles east of Pittsburgh, protests the proposed increased differentials for seaboard territory over the Buffalo-Pittsburgh territory, and asks that Johnstown be accorded the same differentials over Pittsburgh on iron and steel to the coast and intermountain territory as apply to practically all other western points. The carriers offered no evidence on this point. No reason appears why the same differentials should not apply as on traffic to the west in general, but no order can be entered as the matter is not within the scope of this proceeding.

"The cancellation of less-than-carload commodity rates is highly objectionable to many shippers, especially if the proposed increased class rates are approved. The proposal to increase carload commodity rates is strongly opposed by the shippers which are interested in the commodities affected. Shippers of automobiles, rubber tires, chewing gum, drugs and medicines, etc., protest the proposal to cancel their carload and less-than-carload commodity rates and to apply the substantially increased class rates instead.

Conclusions.

"Complainant's allegations with respect to the propriety of the present commodity rates have not been sustained. Speaking of these rates, as a whole, no undue prejudice to intermountain territory appears, and we can not say that the rates should be graded. Conditions warrant the carriers, in their discretion, in continuing the present blanket adjustment on many and perhaps most of the commodities that move in considerable volume. The ships that now ply between the Atlantic and Pacific ports are not nearly so numerous and the tonnage now moving is not nearly so heavy as during the period that followed the opening of the canal and preceded our entry into the war, but it

is, nevertheless, certain that there is now sufficient transportation by water and ample indication that it will further develop and increase, to warrant the belief that within a comparatively short time it will reach a point where it will be felt in a serious loss of tonnage by the rail lines unless they have available appropriate measures to meet the situation. There is not that strife and rivalry that formerly characterized the coexistence of these two modes of transportation to and from the Pacific coast, but as between these separate sets of carriers there is that natural and well-grounded fear of each other's ascendancy and power, sufficient, especially in view of the existing movement by water, to warrant a finding that there is actual competition at the present time. Energetic business competitors in their struggle for success always look beyond the present and are justified in keeping themselves fortified against each other's activities, even before the situation becomes serious. It is mainly for these reasons that the commodity rates have been held to their present level and largely for these reasons that the carriers are now opposing a disturbance of the present adjustment. Moreover, it was for these reasons, and in the interests of rate stability, that the suggestions as to grading made in our report in **Transcontinental Rates, supra**, were not couched in more positive and forceful language. There is less reason now than then for grading. We are not now prepared to say that the rail carriers can well be put in a position to lose or to risk losing a considerable portion of their present and prospective traffic to and from the coast by having their rates increased in order that there may be a differential in favor of intermountain territory. An increase to the coast would be necessary unless we found the present rates to be not less than reasonable maxima. On this record we can not say that this is so. Moreover, rates for long hauls, particularly on low-grade traffic, are often blanketed over extensive territories, and even if the rates to the coast were found to be reasonable maximum rates it would not necessarily follow that all of them should be graded. In view of the special conditions under which these commodity rates were established and have been maintained, we can not fairly, unless we find them to be reasonable maximum rates, spread their effects farther into the interior. It is understood, of course, that these findings apply to the general rate structure. A somewhat different conclusion might be reached with respect to a specific commodity rate constituting an exception to the general adjustment. The fact that rates from certain interior eastern points of origin to the Pacific coast are lower than from the Atlantic seaboard is discussed in the record although not definitely

brought in issue by the pleadings. This grouping of eastern points of origin applies to the intermountain territory as well as to the Pacific coast terminals. The grouping is not a source of injury to complainant. It reflects an adjustment of long standing and no opinion is expressed as to the propriety or impropriety thereof.

"What we have said above has special reference to perhaps most of the items in schedule C. However, there are, no doubt some schedule-C items and a number of schedule-B items as to which it is not likely that there will be any important competition for a considerable period and on which it may not be worth while to continue the present rate relationships. Such items could very properly be singled out by the carriers and graded. The record does not enable us to do it. Defendants have not carried out the grading process to the extent that we had hoped. The examiner suggested that in addition to the foregoing some items in schedule A and schedule B might well be put on the class basis. In Appendix No. 10, is a new scale of class rates which he proposed and which, on the whole, are slightly higher than those proposed by the coast committee, plus 33 1-3 per cent. He proposed that if this scale be put into effect we might well authorize the cancellation of less-than-carload commodity rates; also of carload commodity rates on various luxuries and nonessentials, in fact rates on high-grade freight in general which usually moves at class rates, such as automobiles, auto trucks which should be rated second class in western classification territory as they are in the other classification territories; rubber tires and tubes; rubber clothing; chewing gum; musical instruments; talking machines; drugs, medicines, and chemicals, excepting heavy and low-grade articles such as epsom salts and so-called industrial chemicals; and a number of other commodities. He thought that cancellation of these commodity rates would not be attended by the severe increases that characterize the carriers' plan, and that apparently interested shippers should have no reasonable grounds for objection, particularly in view of the fact that the present commodity rates on many of the items are attributable to policies and conditions of bygone days, or exist only because of former water competition that may not have been and perhaps never will be very compelling.

"Methods of rate making based upon theories that are no longer tenable or upon conditions that no longer exist should be discarded. When distances are relatively great, and when transfer at rate-breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory. The railroads should be regarded more and more

as one national system, and the time may not be far distant when we should proceed to the establishment of joint through class and commodity rates, lower than the combinations of locals, between practically all points in the country. We have generally recognized that through rates should be less than the combinations, but prompted chiefly by considerations of paramount public interest, growing out of the revenue conditions of certain carriers, we have refrained from and even declined absolute condemnation of combinations. In this connection the **Boston Chamber of Commerce Case, supra**, may be referred to as an example. We are now vested with specific authority to initiate rates that will protect revenues, and where carriers will suffer depletion of revenue by reason of the establishment of new joint rates, appropriate measures can be taken for their protection. We are not, however, prepared in view of all the circumstances to now require the joint through rates here prayed for.

"Since the record in this case was made up many and far-reaching changes in economic and transportation conditions have occurred. Conditions are unsettled. The future of transportation by rail and by water is uncertain. The suggested comprehensive plans for readjusting all of the rates over this large territory and the evidence submitted for and against each plan tread far outside the limits of the complaint. We deemed it advisable to hear what the parties desired to submit regarding a possible readjustment that would do justice to all. We have discussed some of those matters rather fully in this report. The record and the discussion should be helpful in paving the way for a final settlement of this vexed situation. The extent of the territory that would be affected by a readjustment of all of these rates is indicated by the interests for which appearances are shown. Their interests are diverse and their contentions are often diametrically opposed. These questions can not be settled justly by accepting the views of those on either extreme.

The complaint will be dismissed.
Eastman, **Commissioner**, concurring:

"This complaint was brought at a time when war conditions had well-nigh eliminated service by water between the Atlantic and Pacific coasts. Within the past few months the situation has changed radically in this respect, and under present circumstances I agree that no plan for graded rates which has been proposed in this proceeding can wisely be adopted. I think it also a sound conclusion that upon the present record and in view of the changing conditions no adjustment of the rates to intermountain territory can well be attempted.

"This disposition of the case, however, leaves unanswered various questions which must eventually be faced. If water competition justifies rates from the Atlantic coast to the Pacific coast no higher than to intermountain territory, why should the rates from inland points like Pittsburgh, Cleveland, and Chicago be lower to the Pacific coast than the water-compelled rates from the Atlantic ports? In other words, why should the rates be graded at the eastern end and blanketed at the western? And what conditions exist at these Eastern inland points which compel a parity of rates as between intermountain and pacific coast destinations which are hundreds of miles apart?

"The future consideration of these and similar questions is in no way foreclosed, I take it, by the dismissal of the present complaint.

"Commissioner Esch did not participate in the disposition of this case.

APPENDIXES



APPENDIX NO. 1.

Items on which the present carload commodity rates are graded.

Certain agricultural implements.	Iron prison work.
Aluminum and aluminum articles.	Iron safes.
Boxes and crates and box and crate material.	Phosphate of lime.
Brass, bronze, and copper goods.	Fruit juices.
Various sorts of canned goods.	Certain forest products.
Carbon black.	Malted milk.
Oilskin hats and clothing.	Musical instruments.
Poultry coops.	Edible nuts.
Depilatory (mixture of sodium sulphide and quicklime).	Creosote.
Cotton thread and darning cotton.	Certain paper and paper articles.
Electric batteries.	Plumbers' goods, such as bathtubs, sinks, etc.
Incandescent lamps.	Pumps and spraying machines.
Certain explosives.	Rubber hats, caps, and gloves.
Ice-cream freezers.	Self-heating sadirons.
Dried fruits and vegetables, such as dates and figs.	Talking machines and accessories.
Church and theater furniture.	Pitch and tar.
Plate glass.	Tin boxes, pails, and cans.
Glue.	Rubber tires and tubes.
Heating and cooking apparatus.	Lumber and warehouse trucks.
Iron tanks.	Trunk slats.
Iron stable fittings.	Baby buggies and gocarts.
Iron vault furniture.	Aluminum wire, rope, and cable.
	Wood pulp.
	Plate and sheet zinc.

APPENDIX NO. 2.

Statement showing grading or differences in favor of intermountain territory at present commodity rates.

(Rates are stated in cents per 100 pounds.)

Commodities.	Rate comparison.	From Atlantic seaboard territory	From Chicago territory	From Missouri River territory
		Cents.	Cents.	Cents.
Certain agricultural implements.....	{ To Pacific coast.....	231.5	204	179
	{ To intermountain territory.....	219	191.5	166.5
	{ Difference in favor of intermountain territory.	12.5	12.5	12.5
Canned goods	{ To Pacific coast	194	169	150
	{ To intermountain territory.....	181.5	156.5	137.5
	{ Difference in favor of intermountain territory	12.5	12.5	12.5
Certain forest products...	{ To Pacific coast	115	95	80
	{ To intermountain territory.....	110	90	75
	{ Difference in favor of intermountain territory.	5	5	5
Certain explosives	{ To Pacific coast	350	325	306.5
	{ To intermountain territory.....	331.5	306.5	287.5
	{ Difference in favor of intermountain territory.	18.5	18.5	19

APPENDIX NO. 3.

First class rates proposed by the coast committee compared with present rates and distances as used by the coast committee.

(Rates are stated in cents per 100 pounds.)

From—	To Pacific coast.	To Spokane, Reno, and Phoenix.	To Boise.	To Missoula.	To Butte.	To Salt Lake City.
	Dist. * Rate.	Dist. ** Rate.	Dist. Rate.	Dist. Rate.	Dist. Rate.	Dist. Rate.
Group A (Atlantic seaboard)						
Present rates	3,126 462.5	2,828 437.5	2,720 437.5	2,541 437.5	2,420 430	2,431 425
Proposed rates	3,126 400	2,828 375	2,720 375	2,541 355	2,420 345	2,431 345
Group B (Buffalo-Pittsburgh)						
Present rates	2,685 450	2,389 400	2,273 400	2,100 400	1,979 400	1,990 406
Proposed rates	2,685 380	2,389 355	2,273 355	2,100 335	1,979 325	1,990 325
Group C (Cincinnati-Detroit)						
Present rates	2,516 437.5	2,134 381.5	2,076 381.5	1,945 381.5	1,825 381.5	1,746 376.5
Proposed rates	2,516 370	2,134 345	2,076 345	1,945 325	1,825 310	1,746 310
Group D (Chicago)						
Present rates	2,217 425	1,835 362.5	1,811 351.5	1,632 344	1,511 331.5	1,522 331.5
Proposed rates	2,217 350	1,835 320	1,811 320	1,632 300	1,511 285	1,522 285
Group E (Mississippi River)						
Present rates	2,174 412.5	1,930 350	1,699 335	1,674 344	1,552 331.5	1,407 309
Proposed rates	2,174 340	1,930 310	1,699 300	1,674 300	1,552 285	1,407 270
Group F (Missouri River)						
Present rates	1,777 375	1,437 312.5	1,323 294	1,234 275	1,113 262.5	1,027 250
Proposed rates	1,777 320	1,437 285	1,323 285	1,234 265	1,113 245	1,027 235
Group J (Denver)						
Present rates	1,364 325	1,255 260	911 235	999 274	877 212.5	614 192.5
Proposed rates	1,364 280	1,255 260	911 225	999 230	877 210	614 190

*Distance to Portland.

**Distance to Spokane.

†From St. Paul and Sioux City, \$2.75; from Kansas City, Omaha, and St. Joseph, \$2.84.

‡To Reno and Phoenix, \$2.625.

APPENDIX NO. 4.

Statement from complainant's exhibit to show present less-than-carload commodity rates on representative commodities, compared with class rates proposed by the coast committee, western classification ratings being shown.

(Rates are stated in cents per 100 pounds.)

Commodity.	From Chicago		From New York	
	Present l.c.l. com- modity rates.	Proposed class rates	Present l.c.l. com- modity rates.	Proposed class rates.
Blowers and drills (second class):	267.5	298	312.5	340
To San Francisco.....	267.5	242	312.5	293
To Salt Lake City.....				
Dry laundry bluing (second class):	267.5	298	312.5	340
To San Francisco.....	267.5	242	312.5	293
To Salt Lake City.....				
Boot and shoe findings (first class):	267.5	350	312.5	400
To San Francisco.....	267.5	285	312.5	345
To Salt Lake City.....				
Brass pots and kettles (1½ times first class):	401.5	525	469	600
To San Francisco.....	401.5	427.5	469	517.5
To Salt Lake City.....				
Brushes, vegetable fiber (second class):	267.5	298	312.5	340
To San Francisco.....	267.5	242	312.5	293
To Salt Lake City.....				
Bottle caps (first class):	234	350	274	400
To San Francisco.....	234	285	274	345
To Salt Lake City.....				
Carpets and rugs (first class):	267.5	350	312.5	400
To San Francisco.....	267.5	285	312.5	345
To Salt Lake City.....				
Clocks, value \$10 (first class):	294	350	344	400
To San Francisco.....	294	285	344	345
To Salt Lake City.....				
Cotton clothing (first class):	267.5	350	312.5	400
To San Francisco.....	267.5	285	312.5	345
To Salt Lake City.....				
Cotton shirts and dresses (first class):	294	350	344	400
To San Francisco.....	294	285	344	345
To Salt Lake City.....				
Cotton hosiery and underwear (first class):	267.5	350	312.5	400
To San Francisco.....	267.5	285	312.5	345
To Salt Lake City.....				
Oilskin clothing (first class):	294	350	344	400
To San Francisco.....	294	285	344	345
To Salt Lake City.....				
Chocolate and cocoa (second class):	267.5	298	312.5	340
To San Francisco.....	267.5	242	312.5	293
To Salt Lake City.....				
Confectionery (second class):	267.5	298	312.5	340
To San Francisco.....	267.5	242	312.5	293
To Salt Lake City.....				
Pillows, feather (1½ times first class):	455	525	531.5	600
To San Francisco.....	455	427.5	531.5	517.5
To Salt Lake City.....				
Electric-light fixtures(first class):	294	350	344	400
To San Francisco.....	294	285	344	345
To Salt Lake City.....				
Torches, blow (1½ times first class):	401.5	525	469	600
To San Francisco.....	401.5	427.5	469	517.5
To Salt Lake City.....				
Glass jars, n. o. s. (second class):	267.5	298	312.5	340
To San Francisco.....	267.5	242	312.5	293
To Salt Lake City.....				
Bottles, insulated and jacketed (D-1 class):	401.5	700	469	800
To San Francisco.....	401.5	570	469	690
To Salt Lake City.....				

Statement from complainant's exhibit, etc.—Continued.

Commodity.	From Chicago		From New York	
	Present l.c.l. com- modity rates.	Proposed class rates.	Present l.c.l. com- modity rates.	Proposed class rates.
Cut glassware (D-1 class):				
To San Francisco.....	401.5	700	469	800
To Salt Lake City.....	401.5	570	469	690
Semi-indirect lighting bowls (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345
Wire fly killers (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345
Carriage and wagon hardware (third class):				
To San Francisco.....	246.5	245	284	280
To Salt Lake City.....	246.5	200	284	242
Door bolts (second class):				
To San Francisco.....	219	298	256.5	340
To Salt Lake City.....	219	242	256.5	293
Lawn mowers (second class):				
To San Francisco.....	246.5	298	284	340
To Salt Lake City.....	246.5	242	284	293
Paper bags, plain (third class):				
To San Francisco.....	219	245	256.5	280
To Salt Lake City.....	219	200	256.5	242
Paper cups and pails (second class):				
To San Francisco.....	267.5	298	312.5	340
To Salt Lake City.....	267.5	242	312.5	293
Envelopes (first class):				
To San Francisco.....	267.5	350	312.5	400
To Salt Lake City.....	267.5	285	312.5	345

APPENDIX NO. 5.

Some commodity rates proposed by the coast committee
compared with rates in effect at that time as
shown by complainants.

(Rates are shown in cents per 100 pounds.)

Commodities and territories of origin.	Rate Status	To Pacific coast points	To Spokane, Reno, and Phoenix	To Boise	To Missoula	To Butte	To Salt Lake City	To Denver
Canned goods:								
A.—Atlantic seaboard territory.	{ Existing	137.5	137.5	137.5	137.5	137.5	137.5	.....
	{ Proposed	144	135	135	128	124	124	.....
B.—Buffalo-Pittsburgh territory.	{ Existing	125	125	125	125	125	125	.....
	{ Proposed	131.5	122	122	116	113	113	.....
C.—Cincinnati-Detroit territory.	{ Existing	119	119	119	119	119	119	.....
	{ Proposed	125	116	116	110	105	105	.....
D.—Chicago territory.	{ Existing	112.5	112.5	112.5	112.5	112.5	112.5	84
	{ Proposed	119	108	108	102	96	96	.....
E.—Mississippi River territory.	{ Existing	112.5	112.5	106.5	112.5	112.5	106.5	79
	{ Proposed	119	108	105	105	100	94	.....
F.—Missouri River territory.	{ Existing	106.5	106.5	94	94	94	94	59
	{ Proposed	112.5	100	97	93	87	82	.....
J.—Colorado common-point territory.	{ Existing	94	94	81.5	81.5	81.5	72.5	.....
	{ Proposed	100	93	80	82	75	68	.....
Drugs:								
A.—Atlantic seaboard territory.	{ Existing	231.5	231.5	231.5	187.5	187.5	231.5	.....
	{ Proposed	244	229	229	217	210	210	.....
B.—Buffalo-Pittsburgh territory.	{ Existing	219	219	219	172.5	172.5	219	.....
	{ Proposed	231.5	215	215	204	199	199	.....
C.—Cincinnati-Detroit territory.	{ Existing	212.5	212.5	212.5	172.5	172.5	212.5	.....
	{ Proposed	225	209	209	198	189	189	.....
D.—Chicago territory.	{ Existing	206.5	206.5	160	160	160	160	142.5
	{ Proposed	219	199	199	188	177	177	.....
E.—Mississippi River territory.	{ Existing	200	200	137.5	160	160	137.5	135
	{ Proposed	212.5	195	187	187	180	168	.....
F.—Missouri River territory.	{ Existing	187.5	187.5	137.5	150	150	137.5	100
	{ Proposed	200	178	172	166	154	146	.....
J.—Colorado common-point territory.	{ Existing	187.5	187.5	137.5	150	150	137.5	.....
	{ Proposed	200	178	160	164	150	136	.....
Iron and steel articles:								
A.—Atlantic seaboard territory.	{ Existing	137.5	137.5	137.5	135	135	137.5	.....
	{ Proposed	144	135	135	128	124	124	.....
B.—Buffalo-Pittsburgh territory.	{ Existing	125	125	125	125	125	125	.....
	{ Proposed	131.5	122	122	116	113	113	.....
C.—Cincinnati-Detroit territory.	{ Existing	119	119	119	125	125	119	.....
	{ Proposed	125	116	116	110	105	105	.....
D.—Chicago territory.	{ Existing	112.5	112.5	112.5	112.5	112.5	102.5	84
	{ Proposed	119	108	108	102	96	96	.....
E.—Mississippi River territory.	{ Existing	106.5	112.5	112.5	112.5	112.5	96.5	79
	{ Proposed	112.5	102	99	99	95	89	.....
F.—Missouri River territory.	{ Existing	94	94	94	94	94	82.5	59
	{ Proposed	100	89	86	83	77	73	.....
J.—Colorado common-point territory.	{ Existing	94	94	74	94	94	51.5	.....
	{ Proposed	100	89	80	82	75	68	.....
Pianos:								
A.—Atlantic seaboard territory.	{ Existing	294	312.5	312.5	312.5	312.5	312.5	.....
	{ Proposed	306.5	288	288	273	264	264	.....
B.—Buffalo-Pittsburgh territory.	{ Existing	281.5	294	294	287.5	287.5	294	.....
	{ Proposed	294	273	273	259	253	253	.....
C.—Cincinnati-Detroit territory.	{ Existing	275	281.5	281.5	287.5	287.5	281.5	.....
	{ Proposed	287.5	267	267	253	242	242	.....
D.—Chicago territory.	{ Existing	269	269	267.5	267.5	267.5	267.5	181.5
	{ Proposed	281.5	256	256	242	228	228	.....
E.—Mississippi River territory.	{ Existing	262.5	269	245	267.5	267.5	245	159
	{ Proposed	275	250	242	242	231	217	.....
F.—Missouri River territory.	{ Existing	250	250	245	250	250	245	115
	{ Proposed	262.5	234	226	218	202	192	.....

(Appendix No. 5, Continued)

Commodities and territories of origin.	Rate Status	To Pacific coast points	To Spokane, Reno, and Phoenix	To Boise	To Missoula	To Butte	To Salt Lake City	To Denver
J.—Colorado common-point territory.	{ Existing	250	225	225	225	225	225	.....
Tinware:	{ Proposed	262.5	234	210	215	197	179	.....
A.—Atlantic seaboard territory.	{ Existing	194	194	194	187.5	187.5	194	.....
	{ Proposed	206.5	194	194	184	178	178	.....
B.—Buffalo-Pittsburgh territory.	{ Existing	181.5	181.5	181.5	172.5	172.5	194	.....
	{ Proposed	194	180	180	177	167	167	.....
C.—Cincinnati-Detroit territory.	{ Existing	175	175	175	172.5	172.5	175	.....
	{ Proposed	187.5	174	174	165	158	158	.....
D.—Chicago territory.	{ Existing	169	169	160	160	160	160	106.5
	{ Proposed	181.5	165	165	156	147	147	.....
E.—Mississippi River territory.	{ Existing	162.5	169	152.5	160	160	152.5	100.5
	{ Proposed	175	159	154	154	147	138	.....
F.—Missouri River territory.	{ Existing	150	150	150	149	141.5	136.5	75
	{ Proposed	162.5	145	140	135	125	119	.....
J.—Colorado common-point territory.	{ Existing	150	135	135	135	112.5	112.5	.....
	{ Proposed	162.5	145	130	133	122	111	.....

APPENDIX NO. 6.

**Examples of graded rates proposed by the coast committee
on certain commodities, apparently belonging to schedule
A and schedule B; present rates also shown.**

(The present rate to the coast is generally taken as reasonable, and the rates to intermediate points bear the same percentage relation to the rate to the coast as the proposed first-class rates to the intermediate points bear to the proposed first-class rate to the coast. Rates are in cents per 100 pounds.)

Commodities and destinations.	From Atlantic seaboard territory.			From Chicago territory.			From Missouri River territory.		
	Present.	Proposed.	Changes.*	Present.	Proposed.	Changes.*	Present.	Proposed.	Changes.*
Agricultural implements, viz., blowers, cutters, ensilage, etc., to—									
Coast	231.5	216	—15.5	200	194	—6	179	169	—10
Reno	219	203	—16	187.5	177	—10.5	166.5	150	—16.5
Winnemucca	207.5	197	—10.5	179	169	—10	157.5	142	—15.5
Salt Lake City	204	186	—18	175	157	—18	140	123	—17
Phoenix	219	203	—16	187.5	177	—10.5	166.5	150	—16.5
Gallup	202.5	194	—8.5	162.5	169	+6.5	137.5	142	+4.5
Lordsburg	202.5	194	—8.5	162.5	169	+6.5	137.5	142	+4.5
Deming	185	190	+5	145	163	+18	120	137	+17
Canned goods to—									
Coast	194	194		169	169		150	150	
Reno	181.5	182	+ .5	156.5	154	—2.5	137.5	133	—4.5
Winnemucca	181.5	177	—4.5	156.5	147	—9.5	137.5	126	—11.5
Salt Lake City	172.5	167	—5.5	144	137	—7	115	109	—6
Phoenix	181.5	182	+ .5	156.5	154	—2.5	137.5	133	—4.5
Gallup	181.5	175	—6.5	141.5	147	+5.5	116.5	126	+9.5
Lordsburg	170	175	+5	141.5	147	+5.5	116.5	126	+9.5
Deming	147.5	171	+23.5	125	142	+17	100	121	+21
Plumbers' goods, viz., bath tubs sinks, etc., to—									
Coast	212.5	212	— .5	187.5	187	— .5	169	169	
Reno	200	199	—1	175	170	—5	156.5	150	—6.5
Winnemucca	200	193	—7	175	163	—12	156.5	142	—14.5
Salt Lake City	195	182	—13	156.5	151	—5.5	125	123	—2
Phoenix	200	199	—1	175	170	—5	156.5	150	—6.5
Gallup	200	191	—9	175	163	—12	156.5	142	—14.5
Lordsburg	200	191	—9	175	163	—12	156.5	142	—14.5
Deming	200	187	—13	175	157	—18	150	137	—13

*Increases indicated by plus sign; reductions by minus sign.

APPENDIX NO. 7.

**Examples of graded rates proposed by the coast committee
on certain commodities, principally in schedule C; present
rates also shown.**

(The present rate to the coast is increased somewhat and then taken as reasonable, and the rates to the intermediate points are made to bear the same percentage relation to the rate to the coast as the proposed first-class rates to the intermediate points bear to the proposed first-class rate to the coast. Rates are in cents per 100 pounds.)

Commodities and destinations.	From Atlantic sea-board territory.			From Chicago territory.			From Missouri River territory.		
	Present.	Proposed.	Changes.*	Present.	Proposed.	Changes.*	Present.	Proposed.	Changes.*
Agricultural implements, viz, cultivators, harrows, etc., to—									
Coast	200	212	+12	175	187	+12	156.5	169	+13.5
Reno	200	199	— 1	175	170	— 5	156.5	150	— 6.5
Winnemucca	200	193	— 7	175	163	—12	156.5	142	—14.5
Salt Lake City.....	195	182	—13	156.5	151	— 5.5	131.5	123	— 8.5
Phoenix	200	199	— 1	175	170	— 5	156.5	150	— 6.5
Gallup	200	191	— 9	175	163	—12	156.5	142	—14.5
Lordsburg	200	191	— 9	175	163	—12	156.5	142	—14.5
Deming	200	187	—13	175	157	—18	156.5	137	—19.5
Bags and bagging, etc., to—									
Coast	150	156	+ 6	125	131	+ 6	119	112	— 7
Reno	150	147	— 3	125	119	— 6	119	100	—19
Winnemucca	150	142	— 8	125	114	—11	119	94	—25
Salt Lake City.....	142.5	134	— 8.5	112.5	106	— 6.5	90	82	— 8
Phoenix	150	147	— 3	125	119	— 6	119	100	—19
Gallup	150	140	—10	125	114	—11	119	94	—25
Lordsburg	150	140	—10	125	114	—11	119	94	—25
Deming	150	137	—13	125	110	—15	119	91	—28
Structural steel to—									
Coast	206.5	219	+13.5	181.5	194	+13.5	162.5	175	+13.5
Reno	206.5	206	— .5	181.5	177	— 4.5	162.5	156	— 6.5
Winnemucca	206.5	199	— 7.5	181.5	169	—12.5	162.5	147	—15.5
Salt Lake City.....	204	188	—16	174	157	—17	140	128	—12
Phoenix	206.5	206	— .5	181.5	177	— 4.5	162.5	156	— 6.5
Gallup	206.5	197	— 9.5	181.5	169	—12.5	162.5	147	—15.5
Lordsburg	206.5	197	— 9.5	181.5	169	—12.5	162.5	147	—15.5
Deming	206.5	193	—13.5	181.5	163	—18.5	162.5	142	—20.5
Petroleum oils to—									
Coast	129.5	139	+ 9.5	109.5	119	+ 9.5	94.5	104	+ 9.5
Reno	129.5	131	+ 1.5	109.5	108	— .5	94.5	93	— 1.5
Winnemucca	120.5	126	+ 5.5	109.5	104	— 5.5	94.5	87	— 7.5
Salt Lake City.....	126.5	120	— 6.5	109.5	96	—13.5	94.5	76	—18.5
Phoenix	129.5	131	+ 1.5	109.5	108	— 1.5	94.5	93	— 1.5
Gallup	129.5	125	— 4.5	109.5	104	— 5.5	94.5	87	— 7.5
Lordsburg	129.5	125	— 4.5	109.5	104	— 5.5	94.5	87	— 7.5
Deming	129.5	122	— 7.5	109.5	100	— 9.5	94.5	84	—10.5

*Increases indicated by plus sign; reductions by minus sign.

APPENDIX NO. 8.

Statement of first-class rates proposed by the carriers compared with present rates.

(Rates are stated in amounts per 100 pounds.)

From—	Rate status	To Pacific coast	To Reno and Phoenix*	To Spokane	To Salt Lake City
Group A.—Atlantic seaboard territory.....	{ Present	\$4.625	\$4.375	\$4.375	\$4.25
	{ Proposed	4.90	4.65	4.65	4.25
Group B.—Buffalo-Pittsburgh territory....	{ Present	4.50	4.00	4.00	4.06
	{ Proposed	4.65	4.36	4.36	4.06
Group C.—Cincinnati-Detroit territory.....	{ Present	4.375	3.815	3.815	3.765
	{ Proposed	4.50	4.13	4.13	3.765
Group D.—Chicago territory.....	{ Present	4.25	3.625	3.625	3.315
	{ Proposed	4.25	3.78	3.78	3.315
Group E.—Mississippi River territory.....	{ Present	4.125	3.50	3.50	3.09
	{ Proposed	4.05	3.57	3.65	3.09
Group F.—Missouri River territory.....	{ Present	3.75	3.125	3.125	2.50
	{ Proposed	3.65	3.08	3.08	2.50
Group J.—Colorado.....	{ Present	3.25	2.625	3.00	1.925
	{ Proposed	3.15	2.625	2.90	1.925

*Phoenix to have the same rates as Reno from Missouri River and east.

APPENDIX NO. 9.

Commodity rates proposed by the carriers compared with rates in effect at that time as shown by the record.

(Rates are stated in cents per 100 pounds.)

Commodities.	To Salt Lake City		To Reno and Phoenix		To Spokane		To California coast		To north coast	
	Exist- ing	Pro- posed	Exist- ing	Pro- posed	Exist- ing	Pro- posed	Exist- ing	Pro- posed	Exist- ing	Pro- posed
Agricultural implements:										
A.—Atlantic seaboard ter.....	199.5	(*)	219	214	204	214	213.5	229	216.5	229
B.—Buffalo-Pittsburgh ter.....	181	(*)	202.5	198	202	198	215	214	214.5	214
C.—Cincinnati-Detroit ter.....	171	(*)	195	190	195	190	207.5	208	207.5	208
D.—Chicago ter.....	156.5	(*)	187.5	175	181.5	175	200	195	194	195
E.—Mississippi River ter.....	147	(*)	182.5	168	176.5	168	195	189	189	189
F.—Missouri River ter.**.....	131.5	(*)	166.5	153	156.5	153	179	175	169	175
Agricultural implement parts:										
A.—Atlantic seaboard ter.....	169	197	169	197	169	197	169	197	169	197
B.—Buffalo-Pittsburgh ter.....	156.5	179	156.5	182	156.5	182	156.5	185	156.5	185
C.—Cincinnati-Detroit ter.....	150	169	150	174	150	174	150	178	150	178
D.—Chicago ter.....	144	152	144	157	144	157	144	162	144	162
E.—Mississippi River ter.....	137.5	145	137.5	150	144	157	137.5	155	144	162
F.—Missouri River ter.**.....	121.5	121.5	125	129	125	129	125	136	125	136
Bags and bagging(gunny, jute, also cotton-lined.)										
A.—Atlantic seaboard ter.....	150	172	150	183	150	183	150	194	150	194
B.—Buffalo-Pittsburgh ter.....	137.5	158	137.5	169	137.5	169	137.5	179	137.5	179
C.—Cincinnati-Detroit ter.....	131.5	146.5	131.5	158	131.5	158	131.5	170	131.5	170
D.—Chicago ter.....	119	119	125	135	125	135	125	150	125	150
E.—Mississippi River ter.....	112.5	112.5	125	128	125	135	125	144	125	150
F.—Missouri River ter.**.....	95	95	119	113	119	113	119	130	119	130
Canned goods:†										
A.—Atlantic seaboard ter.....	137.5	158	137.5	159	137.5	159	137.5	160	137.5	160
B.—Buffalo-Pittsburgh ter.....	125	140	125	144	125	144	125	148	125	148
C.—Cincinnati-Detroit ter.....	119	131	119	136	119	136	119	141	119	141
D.—Chicago ter.....	112.5	113	112.5	119	112.5	119	112.5	125	112.5	125
E.—Mississippi River ter.....	112.5	107	112.5	113	112.5	119	112.5	119	112.5	125
F.—Missouri River ter.**.....	106.5	90	106.5	99	106.5	99	106.5	106.5	106.5	106.5
Glass bottles and fruit jars:‡										
A.—Atlantic seaboard ter.....	125	125	125	125	125	125	125	125	125	125
B.—Buffalo-Pittsburgh ter.....	125	125	125	125	125	125	125	125	125	125
C.—Cincinnati-Detroit ter.....	125	125	125	125	125	125	125	125	125	125
D.—Chicago ter.....	105	105	119	112	119	112	119	119	119	119
E.—Mississippi River ter.....	99	99	119	109	119	112	119	119	119	119
F.—Missouri River ter.**.....	84	84	112.5	104	112.5	104	112.5	112.5	112.5	112.5
Iron and brass beds:										
A.—Atlantic seaboard ter.....	200	204	200	212	200	212	200	219	200	219
B.—Buffalo-Pittsburgh ter.....	185.5	185.5	187.5	195	187.5	195	187.5	204	187.5	204
C.—Cincinnati-Detroit ter.....	174	174	181.5	185	181.5	185	181.5	195	181.5	195
D.—Chicago ter.....	144	144	175	160	175	160	175	175	175	175
E.—Mississippi River ter.....	137.5	137.5	169	153	175	160	169	169	175	175
F.—Missouri River ter.**.....	122.5	122.5	156.5	139.5	156.5	139.5	156.5	156.5	156.5	156.5
Iron and steel articles:										
A.—Atlantic seaboard ter.....	125	129.5	125	133	125	133	125	135	125	135
B.—Buffalo-Pittsburgh ter.....	119	120.5	119	124	119	124	119	128	119	128
C.—Cincinnati-Detroit ter.....	102.5	102.5	112.5	107.5	112.5	107.5	112.5	112.5	112.5	112.5
D.—Chicago ter.....	96.5	96.5	106.5	101.5	112.5	107.5	106.5	106.5	112.5	112.5
E.—Mississippi River ter.....	82.5	82.5	94	88	94	88	94	94	94	94
F.—Missouri River ter.**.....										

* No change in rates proposed.

**Missouri River territory here includes most of Nebraska, Kansas, Oklahoma, and Texas.

† From Group J to Reno and Spokane; existing rate, 94 cents; proposed rate, 85 cents.

‡ From Group H; rate to Spokane, 112 cents, to north coast, 119 cents.

APPENDIX NO. 10.

Examiner's scale of class rates.

(Rates are stated in cents per 100 pounds.)

First-class rates to—	From Denver	From Missouri River	From Missis- sippi River	From Chicago	From Cincin- nati and Detroit	From Buffalo and Pitts- burgh	From Atlantic Seaboard
Pacific coast	410	450	475	490	515	530	550
Spokane, Reno, and Phoenix....	*375	400	435	450	480	500	520
Boise	310	385	425	450	480	500	520
Missoula	325	365	425	425	460	480	500
Butte	285	325	400	400	440	460	480
Salt Lake City & Albuquerque	260	315	375	400	440	460	480
Denver and Cheyenne.....	.....	185	260	285	335	370	400

*Rate to Spokane, 375 cents; to Reno and Phoenix, 335 cents.

“Rates for the lower classes to be related to first-class rates, western classification to apply, according to the following percentages:

Classes.....	1	2	3	4	5	A	B	C	D	E
Percentages....	100	85	70	60	45	50	35	30	25	20

“No rates are suggested to points east of Denver, for the reason that no hearing has been had on the adjustment to that territory. However, the adoption of the above scale would no doubt lead to reductions from official classification territory to points in western classification territory east of Denver, and it might be found proper to provide, for the present at least, that 90 or some other per cent of the Mississippi River combination would be used for that traffic, the separate classifications to be applied to each basing factor.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 29th day of March, A. D. 1921.

No. 10826.

Intermediate Rate Association

v.

Director General, Aberdeen & Rockfish Railroad
Company, et. al.

“This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed."

By the Commission.

(Seal)

George B. McGinty,
Secretary.

Live Stock.

The Board of Railroad Commissioners was a party complainant before the Interstate Commerce Commission in a proceeding directed against all carload rates on ordinary live stock in the territory served by the Western and Mountain Pacific groups of carriers. The complaint alleged in substance that the freight rates on such commodity were unjust and unreasonable and reductions were sought very largely on the condition that it was impossible for the live stock industry to thrive under the rates attacked.

On June 25, 1918, in accordance with General Order No. 28 of the Director General of Railroads, all rates on live stock were increased 25 per cent, but not more than seven cents per one hundred pounds, nor more than \$15.00 per standard 36 foot car. On August 26, 1920, these rates were again increased, 35, 25 or 33 1-3 per cent according to their application within the western group, within the Mountain Pacific group or between groups. This Board asked for the elimination of both of these general increases and for the restoration of rates in effect June 24th, 1918.

The Interstate Commerce Commission declined to make a positive order requiring the reduction of live stock rates as prayed for, but it recommended to the carriers that they should themselves reduce all live stock rates in western territory, except those on horses and mules, which are higher than fifty cents per one hundred pounds and that this reduction should be made to the basis of eight per cent of the present rates but not less than fifty cents per one hundred pounds. The carriers met the suggestion. The decision in the live stock case is very illuminative as it throws considerable light on the reasoning of the Interstate Commerce Commission in the contest between industrial disaster and the efforts of the carriers to recoup a fair return on the value of their properties. The report and order of the Interstate Commerce Commission follows:

INTERSTATE COMMERCE COMMISSION.

12146.

NATIONAL LIVE STOCK SHIPPERS' LEAGUE ET AL
v.ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY ET AL.

Submitted July 19, 1921, Decided August 3, 1921.

"Upon complaint that rates on ordinary live stock, in carloads, within the territory served by the western and mountain-Pacific groups of carriers as defined in **Increased Rates, 1920**, 58 I. C. C., 220, are unjust and unreasonable; **Held**, That the record as made will not support a finding that the rates assailed, as a whole, are unjust and unreasonable. Basis of readjustment indicated and record held open.

S. H. Cowan, Clifford Thorne, Graddy Cary, S. C. Rowe, F. S. Jackson, J. H. Henderson, A. Sykes, John B. Kendrick and T. W. Tomlinson for complainants.

F. E. Andrews, J. R. Bell, C. S. Burg, J. N. Davis, O. W. Dynes, A. B. Enoch, R. J. Hagman, H. G. Herbel, M. M. Joyce, B. W. Scandrett, H. A. Scandrett, F. H. Towner, J. M. Souby, Robert H. Widdicombe, F. H. Wood, and Kenneth F. Burgess for defendants.

J. H. Henderson for Board of Railroad Commissioners of Iowa; P. A. Conway and E. A. Helm for Public Utilities Commission of the state of Kansas; Oliver E. Sweet, J. W. Raish, J. J. Murphy, D. E. Brisbine, and D. L. Kelly for Board of Railroad Commissioners of the state of South Dakota; V. E. Smart for Board of Railroad Commissioners of the state of North Dakota; John E. Benton for Corporation Commission of Arizona, Board of Railroad Commissioners of Montana, and Public Service Commission of Nevada; A. Sykes for Farmers' Live Stock Marketing Committee of Fifteen; and Clifford Thorne and F. S. Jackson for American Farm Bureau Federation, interveners.

Report of the Commission.

"Hall, Commissioner:

The complaint in this case, brought by various organizations of stockmen, is directed against all carload rates on ordinary live stock in the territory served by the western and mountain-Pacific groups of carriers as defined in **Increased Rates, 1920**, 58 I. C. C., 220, hereinafter referred to as **Ex Parte 74**. They allege that the rates are unjust and unreasonable. A readjustment of individual rates is not asked, but a blanket reduction is sought, based primarily on economic considerations, the contention being that it is impossible for the live stock industry to thrive under the present rates, and that they tend to injure business generally. The rate-regulating authorities of sev-

eral of the western states intervened in support of the complaint, as did also certain organizations of stockmen other than complainants.

"Most of the important live-stock rates in the west have been prescribed by us. *Cattle Raisers' Asso. v. Missouri, K. & T. R. Co.*, 11 I. C. C., 296; *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, and 23 I. C. C., 656; *1915 Western Rate Advance Case*, 35 I. C. C., 497; *Live-Stock Rates from Colorado Points to Omaha*, 35 I. C. C., 682; *Railroad Commission of Louisiana v. A. H. T. Ry Co.*, 41 I. C. C., 83; *Dimmitt-Caudle-Smith Live Stock Commission Co. v. R. R. Co.*, 47 I. C. C., 287, and 51 I. C. C., 71; *Shreveport-Texas Cattle, Lignite, Wood, and Tanbark*, 48 I. C. C., 283; and other cases. Generally speaking, the rates thus prescribed remained without change for several years. On June 25, 1918, in accordance with general order No. 28 of the Director General of Railroads, all were increased 25 per cent, but not more than 7 cents per 100 pounds, nor more than \$15 per standard 36-foot car where rates were stated per car. On August 26, 1920, following Ex Parte 74, they were increased 35, 25, or 33-1-3 per cent, according as applied within the western group, within the mountain-Pacific group, or between groups. Complainants ask for elimination of both of these general increases and for restoration of the rates in effect June 24, 1918.

"Cattle are raised in most of the territory here considered, but in the semiarid belt west of the great grain-growing region, that is, generally speaking, west of the one hundredth meridian, comprising Montana, Idaho, Wyoming, eastern Colorado, and the western portions of North and South Dakota, Kansas, Nebraska, Oklahoma, and Texas, as also in portions of New Mexico, Arizona, Nevada, and California, cattle raising is the principal industry and the mainstay of many urban communities of considerable size, to which the rural population resorts for recreation, education, and trade, and from which building materials, household effects, tools, implements, machines, automobiles, provisions, fuel, and other supplies are drawn. These come in turn from manufacturing and other centers elsewhere. When the live-stock industry is depressed, business throughout this region is depressed, and in other parts of the country is affected to some extent. In the grain-growing region in the eastern part of the territory here considered hogs are produced in great numbers, and cattle, brought from the ranges farther west, are fattened or "finished" for market. Sheep are raised principally in Idaho, Montana, Wyoming, Arizona, and New Mexico; horses and mules in Iowa, Missouri, Kansas, and Nebraska. There is little evidence of record with respect to horses and mules.

"The record establishes that the live-stock industry is in a serious condition. The economic readjustment has affected it severely. The financial resources of the average stockman are practically exhausted and he finds it almost impossible to obtain relief. Real estate and live stock are mortgaged and the banks have loaned to their capacity. Interest rates generally range from 8 to 10 per cent but are little above prewar figures. The federal reserve banks will not rediscount live-stock paper unless extremely well secured and maturing in not to exceed six months. Stockmen are having great difficulty in obtaining money for operating expenses and the purchase of new stock to replenish their herds. We understand it to be the view of the Federal Reserve Board that \$50,000,000 should be provided for loans to those engaged in the live-stock industry. One of the principal witnesses for the live-stock interests testified that this relief would not go far toward ameliorating the situation.

"Stockmen have lost many millions of dollars since the war because of the rapid and severe decline in market prices of live stock. Many have lost the savings of a lifetime. Large herds of "stockers" and "feeders" purchased when prices were high, have been and are being sold upon maturity at much lower figures, with a resulting loss, not only of the difference in price, but of the expense of feeding and care during a period when the costs of labor and feed were at their highest. The situation in the range country is particularly serious. On account of long hauls the freight charge is there a more important item, especially since the general percentage increase of 1920 resulted in increases greater in amount than in the rates for short hauls. The collapse of the wool market left the sheep producers of the northwest in financial straits, and drought conditions there several years ago depleted herds perhaps 20 to 25 per cent, put cattle men to great expense in transferring their animals to other pastures, and greatly handicapped the industry generally. There is now a severe drought in southwestern Texas and southern Arizona and New Mexico. The statement was made in argument that on January 1, 1900, there were 50,563,000 beef cattle in the United States; on January 1, 1910, 41,178,000; and on January 1, 1920, 35,434,000 according to census compilations.

"Stock that should be held until further matured is being sold at whatever it will bring. Ranches are not replenished because money is lacking with which to buy new stock, and because conditions, present and prospective, are alike discouraging. Many growers have ceased to raise live stock and many more expect to take the same course. Some continue only because they must, for, like men in

other industries, they can not suddenly cease operations and later resume successfully on a normal scale. Years are required to develop a herd of breeding cattle. Indications are that several years must elapse before the industry can wholly recover, even under favorable conditions.

"Representative stockmen testify that for years past the industry has been conducted on narrow margins and without much profit. Unless extremely profitable before the war it is difficult to see how it could be profitable now, even for the man who disregards his war losses and starts anew, for, as will be explained in some detail, the costs of production are still somewhat higher than in prewar times and the selling prices have declined to nearly the basis of 1913 to 1915, inclusive.

"Labor costs, which constitute one of the principal items of expense, are still somewhat higher than before the war. The cost of food for the laborers is much above the prewar figure. Many leases on grazing lands made several years ago at high figures have still about a year to run. Stock feeds, such as corn, alfalfa, and cottonseed meal, especially when drawn from distant points, cost considerably more than formerly. Maintenance costs and taxes have greatly increased. So have the charges made by commission men for selling stock on the markets, which in many cases are double what they were before the war. These charges constitute an important item of expense, as they generally range from \$12 to \$24 per car, dependent upon the market, the kind of stock, and, in the case of sheep and hogs, the mode of loading, whether in single or double deck cars. Only a few commission men have reduced their charges since the war. Shippers must pay the carriers \$1 per car for bedding and \$2.50 per car for disinfecting. Formerly these charges were not made. Feeding-in-transit charges and charges for switching, yardage, and other services at terminals have been substantially increased. In addition to all these is the substantial increase in freight rates. Those which immediately prior to 1918 were 28 cents per 100 pounds or less were increased under general order No. 28 and Ex Parte 74 about 68 per cent. For longer hauls the ratio of increase greatly diminishes but in no case is it less than 40 per cent.

"In most markets the prices of live stock, except possibly stock cattle, bear a relation to prices at Chicago. The proceeds realized by the shipper on stock sent to market are based on the price at that market less the transportation, feeding-in-transit, and marketing charges. Market prices are near the prewar levels. It is difficult to state the situation exactly, because of the daily fluctuations, and comparisons vary according to the prewar and postwar periods

used in arriving at average figures. It will be seen from the following table that on beef cattle and hogs the present prices are somewhat above those which prevailed during the period from 1910 to 1914:

AVERAGE PRICES PER 100 POUNDS OF NATIVE BEEF CATTLE (900 TO 1,900 POUNDS) AT CHICAGO.

Month.	Average, 1910-1914	1913	1914	1915	1916	1917	1918	1919	1920	1921
January	\$7.09	\$7.80	\$8.45	\$8.05	\$8.35	\$10.15	\$12.10	\$15.80	\$13.95	\$8.70
February	7.13	8.25	8.30	7.50	8.35	10.50	12.00	15.95	13.05	8.20
March	7.48	8.30	8.35	7.65	8.75	11.25	12.60	16.05	13.10	9.00
April	7.59	8.15	8.50	7.70	9.10	11.75	14.70	15.85	12.30	8.15
May	7.56	8.00	8.40	8.35	9.50	11.90	15.40	15.00	12.25	8.25
June	7.66	8.15	8.60	8.80	9.85	12.15	15.85	13.55	14.95	.....
July	7.67	8.25	8.80	9.20	9.25	12.35	16.05	15.60	15.00	.....
August	7.94	8.30	9.10	9.05	9.45	12.70	15.75	16.45	14.85	.....
September	7.92	8.50	9.35	8.95	9.40	13.10	16.00	15.50	15.05	.....
October	7.74	8.40	9.05	8.80	9.75	11.70	14.80	16.15	14.20	.....
November	7.57	8.25	8.60	8.70	10.15	11.10	15.05	15.10	12.00	.....
December	7.41	8.20	8.35	8.35	10.00	11.40	14.90	14.35	10.10	.....

AVERAGE PRICES PER 100 POUNDS OF HOGS (ALL GRADES, EXCEPT PIGS) AT CHICAGO.

January	7.70	7.45	8.30	6.90	7.20	10.90	16.30	17.60	15.00	9.40
February	7.88	8.15	8.60	6.80	8.20	12.45	16.65	17.65	14.55	9.35
March	8.42	8.90	8.70	6.75	9.65	14.80	17.10	19.10	14.95	9.90
April	8.33	9.05	8.65	7.30	9.75	15.75	17.45	20.40	14.90	8.50
May	8.04	8.55	8.45	7.60	9.85	15.90	17.45	20.60	14.30	8.35
June	8.01	8.65	8.20	7.60	9.70	15.50	16.30	20.40	14.70	.....
July	8.17	9.05	8.70	7.25	9.80	13.20	17.75	21.85	14.85	.....
August	8.25	8.35	9.00	6.90	10.30	16.90	19.00	20.00	14.75	.....
September	8.28	8.30	8.85	7.25	10.70	18.20	19.65	17.45	15.90	.....
October	7.91	8.20	7.65	7.90	17.15	17.15	14.35	14.35	14.05	.....
November	7.38	7.75	7.50	6.65	9.60	17.40	17.70	14.20	12.20	.....
December	7.25	7.70	7.10	6.40	9.95	16.85	17.55	13.60	9.55	.....

"The record does not afford like data as to sheep and lambs. If the years 1913 to 1916, inclusive, be taken as the prewar period, the difference between the prices prevailing then and now is even less marked. The following table compares that period with the first five months of 1921:

	1913-1916		1921	
	Range of average prices	Average	Range of average prices	Average
Beef cattle	\$7.50 to \$10.15	\$8.70	\$8.15 to \$9.05	\$8.45
Hogs	6.40 to 10.70	8.35	8.35 to 9.90	9.10
Sheep	4.30 to 9.00	6.25	4.75 to 6.45	5.65
Lambs	6.85 to 12.70	8.85	9.20 to 11.10	10.10

"Prices mounted gradually during that period and have fluctuated considerably this year. In the following table the average 1913 Chicago prices are taken as 100 per cent and the level of average prices there for succeeding years is indicated by a higher or lower percentage.

Period.	Beef cattle	Hogs	Sheep	Lambs
	Per cent.	Per cent.	Per cent.	Per cent.
1913	100	100	100	100
1914	105	99	107	104
1915	102	85	121	116
1916	115	115	151	139
1917	141	181	212	201
1918	178	209	234	215
1919	188	214	196	207
1920	161	169	179	188
Jan., 1921	105	113	95	139
Feb., 1921	99	112	91	117
Mar., 1921	110	119	112	123
Apr., 1921	98	102	124	122
May, 1921	100	100	120	144

"It is apparent that the increases in prices, particularly of cattle, hogs, and sheep, do not measure up to the increase in the expense of producing and marketing. The indications are that the live-stock grower, at best, is not receiving, and will not receive, if present production and marketing costs and selling prices continue, more than a nominal return over and above out-of-pocket costs.

"The present relatively low prices of live stock are due to a number of causes which it is not necessary here to discuss, one important factor being the high retail prices still exacted for meats in spite of the reduced purchasing power of the average consumer.

"Stockmen seem to be doing, what they can to help themselves. They say that freight charges constitute the only items of expense, aside from commission charges, and presumably taxes, which are at their highest, and urge that the public good demands a prompt reduction to relieve the situation. Many factors have contributed to the present distress, but the freight-rate burden is one which, in their opinion, can and should be lifted. Complainants point out that the value of live stock is far below what it was when Ex Parte 74 was heard, and that the value of the commodity is one of the important considerations in rate making; also that the value of the service to the shipper, and what the traffic can bear, are generally given careful consideration, and may sometimes take precedence over revenue considerations.

"As the stock matures, most of it must be marketed. Freight rates have not appreciably reduced the movement. There has been some reduction since 1918 and 1919, when

the movement was greatest, but for 1921, judging by the figures for the first four or five months, it promises to equal or exceed that prior to the war. Complainants do not seek reduction in the rates on the ground that it would substantially increase the present movement, but on the plea that it would stimulate the industry, enable it more quickly to recoup its losses, help save it from ruin, preserve it as a future and continuing source of traffic for the carriers, and give the stockmen more purchasing power, thereby tending to hasten restoration of better conditions.

"Emergency reductions were made in May, 1921, and are still effective, in rates on stock or range animals from ranges of the southwest to pastures in the north and east. These reductions eliminated the entire increase made under Ex Parte 74, and have resulted in rates in no case more than 7 cents per 100 pounds higher than in prewar years. There is nothing to show that these reductions have materially increased the movement of stock animals; on the contrary, this movement has apparently been lighter this season than in former years.

"The difficulties encountered by defendants in the endeavor to keep their roads in operation are a matter of common knowledge and need not be considered in detail. It is manifest from the evidence that defendants are in no position to suffer extensive reductions in operating revenues. They state that the annual movement of live stock in this territory is approximately 1,400,000 cars, on which freight charges of approximately \$86,000,000, or an average of \$66 per car are paid. At the present market prices the value of a car of live stock is about \$1,800. Defendants estimate that on the basis of their 1919 traffic the reductions sought would lessen their revenues by about \$34,000,000. If only the increases under Ex Parte 74 were taken off the diminution in revenue estimated would be about \$22,500,000. These estimates may exceed the mark as applied to 1921. for the reason that the tonnage in 1919 was somewhat greater than it apparently will be in 1921.

"Defendants have introduced much evidence in support of their contentions that if there is any commodity which should be excepted from a reduction in rates it is live stock; that the present rates contribute to the revenues of the carriers in less proportion than do the rates on many other commodities of importance; that judged by the usually recognized standards they are relatively low for the service performed; that they have not been increased as much in the past 10 years as many other rates; and that, on account of the light loading, a condition which probably can not be remedied because of the inherent nature of the traffic, the car-mile earnings are low.

"Defendants undertook on brief to condense in tables the substance of voluminous exhibits. From their brief are taken the following tables:

Commodity	C. & N. W.*		C. M. & St. P.*		Nor. Pac.*		Tex. & Pac.*		M. K. & T.*	
	Average Haul	Car-mile Earnings	Average Haul	Car-mile Earnings	Average Haul	Car-mile Earnings	Average Haul	Car-mile Earnings	Average Haul	Car-mile Earnings
Live Stock	243	24.21	209	21.00	318.8	22.47	196	22.70	293	15.08
All Carload Freight.....	188	34.15	194	29.91			185	34.13	259	32.34
Products of Mines.....	136	42.57			166.1	39.78			147	36.14
Manufactures and Miscellaneous	204	37.27			479.3	31.61			267	16.34
Products of Animals.....	250	25.42							470	25.78
Grain	220	48.54	275	46.05					**297	31.58

*C. & N. W. figures are for October, November, and December, 1920, thus reflecting advanced rates under Ex Parte 74. C. M. & St. P., figures are for June, 1920. M. K. & T. figures are for the last ten months of 1920. Other figures are for the calendar year 1920.

**Includes all products of agriculture.

Commodity.	C. & N. W.		Nor. Pac.	
	Average Haul	Car-mile Earnings	Average Haul	Earnings Car-mile
Live Stock.....	226	20.45	318.8	22.47
Grain.....	224	40.26		
Hay, etc.....	188	17.63		
Fresh Meats.....	303	20.22	325.3	33.22
Packing House Products.....	211	26.07	637.4	36.67
Poultry.....	372	34.21	238.4	56.09
Eggs.....	378	28.11	701.7	32.07
Butter and Cheese.....	256	36.58	341.7	44.60

Commodity.	C. B. & Q. R. R.	
	Average* Haul	Car-mile Earnings
Cattle	447	21.85
Hogs	447	19.40
Sheep (single deck)	358	14.77
Sheep (double deck)	447	20.82
Fresh Meats	411	21.75
Packing House Products	411	29.26
Butter	447	58.34
Eggs	447	53.85
Dressed Poultry	447	53.85
Live Poultry	447	46.97
Grain	447	52.84
Hay	447	18.92
Agricultural Implements	447	44.53

*Average distances from certain points to certain markets.

"It will be noted that hay and, over the Burlington, fresh meats are the only commodities shown which yield car-mile earnings as low as or lower than those on live stock. On the Chicago & North Western, for example,

12.9 per cent of the entire carload traffic for 1920, as measured by car-miles, was live stock, but it yielded only 7.9 per cent of the total carload revenue.

"Many items of expense incident to the transportation of live stock are not met in handling other traffic. Loss-and-damage claims are unusually heavy. Special facilities must be provided for loading. The special and expedited service needed results in expensive delays to other traffic. Caretakers are carried free. Most of the cars are handled empty in one direction, which is not the case as to most other traffic. The incidents and peculiar characteristics of the traffic have been considered at length in the cases cited, and need not be further detailed here. Moreover, as above stated, except for two general increases, that made by the Director General and that authorized by us in Ex Parte 74, the rates are for the most part those fixed by us in previous cases.

"Although not excessive, considered as a whole, from a transportation standpoint, should we nevertheless require that they be substantially reduced to assist in tiding the live-stock industry over its present period of adversity and to hasten a return of better conditions and business prosperity?

The complaint covers all rates on live stock in the territory west of the Mississippi River and Chicago. These range approximately from 10 cents to \$1.25 per 100 pounds. Among the lower rates which move a large volume of traffic are those to Chicago from the Missouri River, 40 cents on cattle and 47 cents on hogs, and those from central Iowa, 37 and 40 cents on cattle and hogs, respectively. Among the higher rates on cattle and hogs which move a considerable volume of traffic are those to Chicago from western Montana, e. g., Helena, \$1.015 and \$1.125, respectively, and from Texas, e. g., San Antonio, 90.5 cents and \$1.105, respectively.

"The increases made since 1917 amount to 15 and 32 cents per 100 pounds, respectively, in the cattle rates from Des Moines and Helena to Chicago, approximately one-sixth and one-third of a cent per pound of cattle. Since 1919 cattle and hogs have declined in market price approximately 7 and 8 cents per pound, respectively. These declines represent, in amount, from 20 to 40 times the increase in freight rates since 1917. It is difficult to deduce from these figures that increases in live-stock rates can have been an important factor in bringing about the present deplorable situation, nor does it seem that the reductions sought would of themselves materially relieve that situation. Transportation charges on live stock represent on the average less than one-twentieth of the present market prices,

and it may be doubted whether free transportation of live stock at this time would substantially lessen the ills under which the industry is suffering. Nor is it clear to what extent the producers of live stock would receive the benefit of the general reduction sought.

"Complainants have made their record and presented their case largely on the basis of economic necessity. Little evidence was introduced by them as to the reasonableness of specific rates or groups of rates. They do not seriously assail the live-stock rate structure, in the main prescribed by us, as it existed prior to the increases made by the Director General under general order No. 28. They seek removal of that increase, and of the subsequent increase authorized by us under Ex Parte 74, as applied to the preexisting structure, without distinguishing between its several parts.

"Defendants have met the issue thus presented with evidence as to the reasonableness of the present rate structure as a whole, judged by the recognized transportation standards. It has been suggested that to these standards should be added another, that of economic necessity; that the carriers as public servants should bear part of the public burdens; and that we may find unjust and unreasonable a rate structure which is not relaxed to relieve the needs of an industry. Put in another way, the proposition is advanced that we may find existing rates unjust and unreasonable, and require that they be reduced below what would be justified by standards heretofore recognized, because an industry is not prospering. If that be true, then the converse must be true, that at times when the industry prospers we may find justified rates higher than those which under accepted standards would be just and reasonable. If true of this industry, it must be true of other industries that languish or flourish, now and hereafter; and if true of industries, why not true of localities or individuals? The answer is that the foundations of what is just and reasonable are not set on such shifting sands. Essentially the proposition is not new and has been dealt with and disposed of long ago.

In *Railroad Commissioners of Kansas v. A. T. & S. F. Ry. Co.*, 22 I. C. C., 407, at 410 we said:

"This Commission has often said that it can not require of carriers the establishment of rates which will guarantee to a shipper the profitable conduct of his business. The railway may not impose an unreasonable transportation charge merely because the business of the shipper is so profitable that he can pay it; nor, conversely, can the shipper demand that an unreasonably low

charge shall be accorded him simply because the profits of his business have shrunk to a point where they are no longer sufficient.

The effect of a rate upon commercial conditions, whether an industry can exist under particular rates or a particular adjustment of rates, are matters of consequence, and facts tending to show these circumstances and conditions are always pertinent. But they are only a single factor in determining the fundamental question. A narrowing market, increased cost of production, overproduction, and many other considerations may render an industry unprofitable, without showing the freight rate to be unreasonable.'

Similar exposition may be found in *Railroad Commissioners of Montana v. B., A. & P. Ry. Co.*, 31 I. C. C., 641 and many other cases.

"Another aspect should be considered. Carriers subject to the interstate commerce act have been required since its enactment in 1887 to establish and maintain just and reasonable rates. The initiation of those rates has lain with them. Since 1910 we have had power to suspend new rates and in proper case to require their cancellation before they go into effect. Since 1910, also, the burden of proof to show that an increased rate is just and reasonable has been upon the carrier. The words 'just and reasonable' are not defined in the statute. For more than 30 years and in many thousands of reported cases the criteria and standards of reasonableness now generally recognized and accepted have been gradually developed and established for the guidance of carriers and shippers alike.

"The carrier, in essaying to perform its statutory duty of initiating just and reasonable rates, should not be misled by any subordination or rejection in this case of standards bedded in reason and justified by experience. We, therefore, restate that, in considering the reasonableness of rates, industrial prosperity or adversity may be taken into account, with other factors, but can not dominate them.

'The right of a railroad to charge a certain sum for freight does not depend at all upon the fact of whether its customers are making or losing by their business.' *Union Pacific Railroad Co. v. Goodrich*, 149 U. S., 680, 695.

"We have always recognized the right of carriers to so adapt their rates and practices to the needs of the localities and industries which they serve as to promote the welfare of shipper and carrier alike, where that can

be done within the limits of reasonableness and without the undue prejudice and unjust discrimination which the law prohibits. In this we have recognized their right to do what we could not require them to do. We are now asked to impose upon them an economic policy against their will, because the live-stock industry is not prospering under the impact of many and world-wide influences, in which the rate structure plays at best but a minor part. The record as made will not support a finding that the rates assailed, as a whole, are unjust and unreasonable.

"But there are other features of the rate situation which should be considered.

"In Ex Parte 74, we found that the percentage increases there authorized—

'would under present conditions result in rates not unreasonable in the aggregate under section 1, of the act and would enable the carriers in the respective groups, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures and equipment.'

to earn the aggregate annual railway operating income set as a mark by Congress. Of this they have fallen far short, for the reasons, among others, which afflict complainants' industry. We referred to the considerable evidence presented with respect to rates upon individual commodities, live stock among others, and we said:

'It would be desirable, if it were possible, to determine definitely the commodities, the sections of the country, and even the individual rates which can best bear the burden of increases, and the relationships of the rates and differentials which will be disturbed by a percentage increase. This is precluded by the necessity of prompt action upon the main issues presented.'

"In the closing paragraph of our report we said:

'Most of the factors with which we are dealing are constantly changing. It is impossible to forecast with any degree of certainty what the volume of traffic will be. The general price level is changing from month to month and from day to day. It is impracticable at this time to adjust all of the rates on individual commodities. The rates to be established on the basis hereinbefore approved must necessarily be subject to such readjustments as the facts may warrant. It is conceded by the carriers that readjustments will be necessary. It is expected that shippers will take these matters up in the first instance with the

carriers, and the latter will be expected to deal promptly and effectively therewith, to the end that necessary readjustments may be made in as many instances as practicable without appeal to us'

"Such readjustment between shippers and carriers has not been made in rates on ordinary live stock moved to market.

"The importance of stock raising to the general economic situation in the range country lying, generally speaking, west of the one hundredth meridian, has been noted. Because of the long hauls, and for other reasons, rates on live stock from this general territory to packing centers in the middle west have always been relatively high. In a general way this is also true of all rates in western territory for the longer hauls. The percentage basis of increase applied in 1920 to the higher rates for the longer hauls resulted in greater increases per unit than in the rates for shorter hauls. It may be that reductions in the higher rates at this time will, as claimed by complainants, benefit the carriers as well as the live-stock industry.

"Manifestly the higher long-haul rates, such as that on cattle from Helena, Mont., to Chicago, \$1.015 per 100 pounds, are of greater importance to and have greater effect upon the transportation and marketing of live stock than the lower short-haul rates, such as those applicable from Des Moines to Chicago, 37 cents on cattle and 40 cents on hogs, respectively.

"Having in mind the present value of live stock, and other factors, it is our view that under present conditions the carriers should themselves reduce all live-stock rates in western territory, except those on horses and mules, which are higher than 50 cents per 100 pounds and that this reduction should be made to the basis of 80 per cent of the present rates but not less than 50 cents per 100 pounds. Readjustment of the existing rates on this basis would seem to accord with the closing paragraph, above quoted, of our report in *Increased Rates 1920, supra*, would effect reductions in the rates to Chicago from most of the territory lying west of the Missouri River and, from a considerable portion thereof, would in large measure eliminate the rate increases made under that decision. Thus, the rate on cattle from Helena, Mont., to Chicago was 75 cents prior to the 1920 increase and the present rate reduced 20 per cent will become 81 cents.

"No order will be entered at this time, and the record will be held open. Rates in conformity with the suggestions contained herein may be published to become effective on not less than five days' notice.

McChord, Commissioner:

"In my judgment, the case stated in the majority report calls for one or the other of two things, viz, a dismissal of the complaint or the entry of an order awarding specific relief; and, as I comprehend the record, I think we should prescribe a substantial reduction in these rates. Campbell, **Commissioner**, dissenting:

"I can not but express the view that we would have been fully justified in this case in making an absolute and definite finding of unreasonableness as to rates for both long and short hauls and entering an order requiring a reduction, instead of merely suggesting it and holding the record open for more affirmative action should that become necessary. I must hark back to the inception of section 1, of the act. It was enacted for the protection of the shippers, and the words 'unjust and unreasonable' were put there, among other reasons, for the purpose of restraining the carriers from exacting rates which were more than the reasonable value of the services, or greater than the shipper could reasonably afford to pay for the service required. The books are full of decisions, both by the courts and this Commission, construing the words 'just and reasonable.' Many are in point and fully support the theory on which this case was presented.

In **Alexandria & N. Ry. Co. v. Railroad Commission**, 79 So. 863, the court says:

'In order to ascertain what constitutes a just and reasonable rate, two fundamental principles must be considered and followed—the right of the carrier to a fair return on its investment, and the right of the public to be charged no more than the reasonable value of the services.'

"And in 4 R. C. L., 635, 636, we find:

'In arriving at a determination of what is a reasonable rate the interest both of the public and of the carrier should be considered, but it is not always possible to do full justice to both, and where this is the case the rights of the public must prevail. And so it naturally follows that as the charge approaches oppression to the shipper, it should in the same degrees approach the point of minimum profit to the carrier. Ordinarily however the carrier is entitled to reasonable compensation, the determination of which by the court is usually an embarrassing question.'

"In **Puget Sound Electric Railway Co. v. Railroad Commission**, 117 Pac., 739, the court says:

'Hence, in determining the reasonableness of railway rates, consideration must be given, not only to the carrier, but to the individual requiring the

service. The carrier is entitled to an adequate recompense for the service it performs. The individual is entitled to a rate that he can reasonably afford to pay for the service he requires. Upon this point both judicial and economic authority agree. 'It can not be said that a corporation is entitled as of right and without reference to the interests of the public to realize a given per cent upon its capital stock.' When the question arises whether the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered. The rights of the public are not to be ignored. It is alleged here that the rates prescribed are unreasonable and unjust to the company and its stockholders but that involves inquiry as to what is reasonable and just to the public. * * *

"And the Supreme Court of the United States in the well-known case of *Smyth v. Ames*, 169 U. S., 466, held, as indicated by the syllabus:

'A railroad is a public highway, and none the less so because constructed and maintained through the agency of a corporation deriving its existence and powers from the State. Such a corporation was created for public purposes. It performs a function of the State. Its authority to exercise the right of eminent domain and to charge tolls was given primarily for the benefit of the public. It is, therefore, under government control—subject of course, to the constitutional guarantees for the protection of its property. It may not fix its rates with a view solely to its own interests, and ignore the rights of the public; but the rights of the public would be ignored if rates for the transportation of persons or property on a railroad were exacted without reference to the fair value of the property used for the public or of the services rendered, and in order simply that the corporation may meet operating expenses, pay the interest on its obligations, and declare a dividend to stockholders.'

"From these authorities it is clear to my mind that rates can go no higher than the service is reasonably worth to the public requiring the service and that the reasonable value of the service to the public may be insisted upon even though rates so limited would fail to produce the desired return to the carriers upon the investment which

they might feel they were entitled to have used as a basis, so long as the rates charged for the particular service in question did not reach the point of confiscation. I may call attention to the fact that paragraph (a) of sec. 15a of the act, which requires us to fix rates to yield the prescribed return on the estimated value of the carriers' properties devoted to the service of transportation, contains the following proviso:

'Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust and unreasonable, and to prescribe different rates for different sections of the country.'

"The words 'unjust and unreasonable' may have a new and larger meaning than formerly. In any event, it is evident that Congress realized that blanket increases applied to traffic generally might be wholly unsuited to certain individual commodities. Moreover, it is axiomatic that all commodities can not be expected to yield the same degree of profit.

"I am firmly convinced that under the act of 1920 we are virtually responsible for the revenue of the carriers. And there is no one more interested in maintaining transportation facilities at their very highest point of efficiency than I am, but we can not lose sight of the fact that rates must be no higher than just and reasonable, and that we are charged with the maintenance of rates that are made not only with the present in mind but the future also. In other words, it is our duty, to the extent that it is humanly possible, to so regulate rates as to provide traffic for the carriers in the future as well as at present. It would be very short-sighted policy to maintain rates so high as to be unduly burdensome upon an industry and to thus threaten its future traffic.

"For the above reasons I express my keen disappointment that the majority did not see fit to proceed upon this record as now made and require a reduction in the rates.

By the Commission.

(Seal.)

George B. McGinty,
Secretary."

Grain, Grain Products and Hay.

This proceeding, in which the Board of Railroad Commissioners of Montana was among the parties complainant, submitted September 3rd, 1921, makes investigation into the reasonableness and propriety of the level of interstate rates for the transportation of grain, grain products and hay, in car-loads. **The relationship between particular localities and markets is not involved;** only the reasonableness of the basic structure as a whole.

Freight rates on wheat were increased 25 per cent by General Order No. 28, of the Director General of Railroads, effective June 25th, 1918, but not exceeding an increase of 6c per cwt. Other grains, taking a lower rate than wheat, were by the same order put upon the wheat-rate basis. The same advance (25 per cent) also went into effect on flour and other mill products, but were required to be not less than the new wheat rates. By the same order rates were advanced 25 per cent on hay. These advances applied alike to state and interstate traffic. Again on August 26th, 1920, rates on the above named commodities were increased 35 per cent within the western group, 25 per cent within the Mountain-Pacific group, and 33 1-3 per cent between these groups. Generally speaking, the rates on wheat in effect at the time of this investigation were from 50 to 70 per cent, hay 70 per cent, and on corn, oats and barley, approximately 80 per cent, higher than they were prior to June 25th, 1918.

On account of crop failures in 1920, and from severe readjustments, many farmers had to borrow money to purchase seed for the 1921 crop, and were financially involved before it was ready for cultivation. Grain and hay produced last year under war-time costs have been sold at prices below those that prevailed during the war, and the 1921 prices were less than the readjusted production costs; in fact much produce, especially hay, of which there was an abundance, could not be marketed at all. The character, value and volume of this commodity are such as to require relatively low charges for its transportation. Receipts at Kansas City, Omaha and other markets have been unprecedentedly subnormal. Evidently eastern and southern dairy and stock men were substituting undesirable feed, because of the high delivered cost of western hay. **The demand existed** but the freight rates prohibited the movement. Hay can be, and often is shipped in cars that are unsuitable for grain loading. Without expedited or special service, and requires proportionately a slight movement of empty equipment. The agricultural industry in the west has been heavily mortgaged and deeply

indebted to the banks. Several profitable years must be experienced before many of the farmers can recoup their losses.

The decision of the Interstate Commerce Commission, on October 20, 1921, exhibited much more of a disposition to permit prevailing economic factors greater weight in rate adjustments than the Commission's report in the Live-stock Case. While the Commission did not enter a positive reduction order forthwith, it announced that it would order reductions, varying from 12.5 per cent to 17.5 per cent on the commodities involved, if the carriers did not voluntarily make such reductions on or before November 20, 1921. The carriers failed to make the reductions. Accordingly the Interstate Commerce Commission entered a positive order on November 21, 1921, requiring the carriers to establish, on or before December 27, 1921, the reduced rates found necessary. The report follows:

“INTERSTATE COMMERCE COMMISSION.

No. 12929.

INTERSTATE RATES ON GRAIN, GRAIN PRODUCTS,
AND HAY, IN CARLOADS, BETWEEN POINTS IN
THE WESTERN AND MOUNTAIN-PACIFIC GROUPS.
Submitted September 3, 1921, Decided October 20, 1921.

“Rates on grain, grain products, and hay within the territory embraced within the western and mountain-Pacific groups found unjust and unreasonable for the future to the extent shown in the report.

“Clyde M. Reed and P. A. Conway for Public Utilities Commission of Kansas; Amos A. Betts for Arizona Corporation Commission; Dwight N. Lewis, Fred P. Woodruff, and Charles Webster for Board of Railroad Commissioners of Iowa and Iowa Farm Bureau Federation; Paul A. Walker for Corporation Commission of Oklahoma; George E. Erb for Public Utilities Commission of Idaho; F. W. Putnam and Ivan Bowen for Railroad and Warehouse Commission of the State of Minnesota; H. M. Huntington for Wyoming Public Service Commission; Frank Milhollan for Board of Railroad Commissioners of North Dakota; Thorne A. Browne for Nebraska State Railway Commission; Carl D. Jackson for Railroad Commission of Wisconsin; H. Casaday for Public Utilities Commission of Colorado and Colorado Alfalfa Meal Millers Association; John E. Benton for the state commissioners above named, and for Railroad Commission of the State of California, Public Service Commission of Louisiana, Public Service Commission of Missouri, Board of Railroad Commissioners of the State of Montana, Public Service Commission of Nevada, New Mexico State Corporation Commission, Public Service Commission of Oregon, Board of Railroad Commissioners of South Dakota, Public Utilities

Commission of Utah, and Department of Public Works of Washington; Frank L. Smith, H. M. Slater, and Harvey E. Wood for Illinois Commerce Commission.

"Walter Condran for state of Iowa and grain shippers of Iowa; J. W. Raish and J. J. Murphy for producers and shippers of grain, grain products, and hay of North Dakota, and others.

Report of the Commission.

Aitchison, Commissioner:

"This is a proceeding of investigation into the reasonableness and propriety of the level of interstate rates for the transportation of grain, grainproducts, and hay, in carloads, between points in the territory embraced in the western and mountain-pacific groups, as defined in **Increased Rates 1920**, 58 I. C. C., 220, which will also be referred to as **Ex Parte No. 74**. The relationship between particular localities and markets is not involved. Only line-haul rates will here be considered.

"By general order No. 28 of the Director General of Railroads, effective June 25, 1918, commodity rates on wheat were increased 25 per cent, but not exceeding an increase of 6 cents per 100 pounds. Other grains, much of which theretofore had moved at rates lower than those contemporaneously effective on wheat, were by that order put upon the wheat-rate basis. The rates then in effect upon flour and other mill products were increased 25 per cent, not exceeding 6 cents per 100 pounds, but were required to be not less than the new rates on wheat. Hay received an increase of 25 per cent. These increases applied alike to interstate and intrastate traffic.

"On July 29, 1921, we permitted the carriers to increase their interstate rates on these and other commodities 35 per cent within the western group, 25 per cent within the mountain-Pacific group, and 33 1-3 per cent between these groups. Such increases became effective August 26, 1920. By various proceedings, similar increases were made in the intrastate rates within the groups now before us.

"The increases vary somewhat in different sections and on different commodities. For example, in Kansas, at the request of the authorities of the state a flat 3-cent per 100 pounds increase was substituted for the percentage increase, resulting in higher percentages on short than on long hauls. The aggregate increase since June 24, 1918, is greater in many instances on coarse grains than on wheat, for the reason that general order No. 28, eliminated differentials in favor of coarse grains that had long been maintained in certain sections of the country. These differentials were not uniform, and may be said to have ranged from one-half cent to 2 1-2 or 3 cents per 100 pounds. The

percentage increases advanced long-haul rates a greater number of cents than short-hauls rates.

"Generally speaking, the present freight rates on wheat are from 50 to 70 per cent greater than they were prior to June 25, 1918. The increases on corn, oats, and barley generally approximate, and in some instances exceed, 80 per cent. The rates on hay are approximately 70 per cent greater than they were prior to June 25, 1918. In many instances the rates on these commodities have been subjected, during the past few years, to much greater increases than above indicated. On the other hand, there have been some reductions from the peak level. For instance, rates on grain to the Gulf port for export, which were substantially increased during and subsequent to federal control, have been reduced in amounts ranging from 1 to 5 1-2 cents per 100 pounds, influenced by reductions made by eastern lines to the Atlantic seaboard.

This proceeding was instituted following the filing of a petition by the Public Utilities Commission of Kansas, on behalf of all grain and hay shippers of that state, calling attention—

'to the exigencies of the hay and grain industries, and to suggest * * * the advisability, desirability, and necessity of prompt consideration of the matter of reduction in interstate freight rates on grain, grain products, and hay in the western group, with a view to affording relief commensurate with the needs of these industries.'

"Representatives of state commissions, grain and hay markets, and various interests appeared. All will be referred to as petitioners. The carriers will be referred to as respondents.

"The issue thus presented requires us to examine into the reasonableness of the existing rates, and to test these by the standards employed in proceedings brought under section 1, of the interstate commerce act. At the outset it is important for us to consider the status of the agricultural industry in the western and mountain-Pacific territories, and inquire into the effect of the present rate standards upon both shippers and the carriers, for this phase has been stressed by petitioners.

"The western farmers, including those in Illinois, in 1920, produced 75.7 per cent of the nation's wheat, 54.2 per cent of the corn, 68.4 per cent of the oats, 59.5 per cent of the rye, and 89.5 per cent of the barley. These farmers are suffering from severe readjustments, and, generally speaking, are operating at a loss or without profit. Many of them have exhausted their credit and are unable to put in crops. This distressing situation is attributed to acute

deflation of farm prices, and in some instances to drought, low yields, or crop failures. In determining the causes, obviously we must bear in mind the world-wide disturbances, deflations, restrictions of credit and purchasing power, and other elements of the post-war readjustment now in progress. To an extent the distress may be considered as aggravated by the holding of large surpluses from last year's crops for higher prices, to the inability to move them because of car shortages, to land speculation, to free spending during the war, or to failure to foresee inevitable readjustment. There is evidence of reduction in demand for coarse grains and hay and of unusual supplies. The conditions as to wheat are somewhat different, because of an active export demand to meet continued foreign deficits.

"In some districts the farmers had to borrow money to purchase seed for the 1921 crop, and were financially involved before it was ready for cultivation. Grain and hay produced last year under war-time costs have been sold at prices below those that prevailed during the war, and present prices for farm products are less than the readjusted production costs. Much produce, especially hay, will not reach a market. The agricultural industry in the west is heavily mortgaged and deeply indebted to the banks. It has been impossible to liquidate many loans, and either the accrued interest has been added to the principal or foreclosures have occurred. Several profitable years must be experienced before many of the western farmers can recoup their losses. Generally speaking, the distress is least felt by farmers who either own or have a substantial equity in their lands. Renters, burdened with high cash rents, and owners who purchased their holdings at high war prices on credit, and those farmers who did not foresee the coming readjustment, are admittedly in extreme distress. Many renters have given up or will give up farming; and a scaling down of rents, claimed by respondents now to be in process, will be necessary to hold them to the lands.

"While commercial loans have been reduced, agricultural loans have not been similarly reduced, and the funds of country banks are to a large extent unavailable for current commercial and agricultural needs. Farmers have been compelled to settle their debts by marketing crops at low prices. The car supply this harvest season has been good, and the new crop and holdover from 1920 have been rushed to market. The wheat movement in July and August, 1921, has been almost unprecedented. Prices of some grains have fallen from war to prewar and, in instances, to lower than prewar levels.

"Fertilization of land and maintenance of farm equipment are being deferred. Many farmers are unable to make necessary improvements. The purchase of farm implements has been greatly reduced. In all sections there is an increasing delinquency or default in the payment of taxes. The financial condition in irrigated districts is reflected by increases in delinquencies in the payment of the yearly installments, which retard new government irrigation projects. The testimony is that the unprofitableness of farming is driving boys and tenants out of agriculture and into the cities.

"There is an abundance of hay in the west. A large part of it is neither going to market nor being used locally. A large portion of last year's crop is deteriorating, and there is testimony that much of this year's crop would not be cut. Transportation charges constitute a large proportion of the finally delivered price of hay, much of which customarily moves considerable distances. The character, value, volume, and use of this commodity are such as to require relatively low charges for its carriage. **National Hay Asso. v. L. S. & M. S. Ry.**, 9 I. C. C., 264, 306. Receipts at the markets at Kansas City, Omaha, and other points this year have been unprecedentedly subnormal. There is evidence that eastern and southern dairy and stock men are substituting local and undesirable feeds, such as slough grass, straw, and cotton stalks, because of the high delivered costs of western hay. Hay and alfalfa meal dealers and producers insist that there is a potential demand but that the freight rates are now past the point that their products will bear. Hay can be and often is moved in low-grade equipment that is unsuitable for grain hauling, without expedited or special service, and requires proportionately a small movement of empty equipment.

"There is testimony strongly tending to show that if present conditions are continued the less fertile farms will not be cultivated next year, the acreage of grains will be curtailed, and reorganization of farming must follow along lines less favorable to society and to the railroads. It is predicted that the ultimate result will be a short grain supply, higher prices, and suffering. Respondents direct attention to the fact that for the period from January 1, to August 13, 1921, the number of cars loaded with grain and grain products in the western district increased 27 per cent over the number loaded in the same period in 1920, while contemporaneously the loading of live stock, coal, coke, ore, forest products, and miscellaneous freight decreased in percentage ranging from 6 to 58. The number of carloads loaded with all freight showed a decrease of 14 per cent. The large movement to market this year

does not show that the farmer can continue to operate under present production and distribution costs, as it is the result of forced marketing regardless of prices or freight rates. This testimony is opposed by the opinions of witnesses for the carriers that future acreage will not be greatly affected by an unfavorable year of readjustment, and by forced changes in farming and marketing methods and practices. But the weight of the evidence indicates that a continuance of the existing burdens must result in diminished production.

"A comparison between the weighted-average price of 31 farm products and railroad freight revenue per net ton-mile shows that, beginning in 1910 and continuing until 1915, farm produce values and railroad revenues maintained a close and consistent relation; that in 1915 farm products began to ascend and advanced to a peak of 146 per cent in 1919, and then began a rapid descent to practically the prewar level in the summer of 1921. Meanwhile freight revenues continued on practically the prewar level to 1917, when they began to advance to a peak of 79 per cent, and are now 68 per cent above the 1909-1913 level.

"The rise and fall of 'farm prices' is illustrated by the indices compiled by the Department of Agriculture, summarized as follows:

Date	Wheat per bushel	Corn per bushel	Oats per bushel	Barley per bushel	Hay per ton
1911.....	86.9	55.3	38.7	75.2	\$12.83
1912.....	87.4	67.6	41.4	66.9	13.24
1913.....	78.4	59.4	36.8	53.3	11.02
1914.....	88.4	71.4	40.9	51.5	11.28
1915.....	105.2	71.2	42.5	54.1	10.50
1916.....	125.9	73.8	44.0	71.0	10.48
1917.....	200.8	129.2	62.7	107.7	13.53
1918.....	204.3	147.3	74.0	112.6	18.10
1919.....	212.8	151.5	69.5	108.9	20.45
1920.....	217.2	140.5	74.1	106.9	20.85
1921—Jan. 1.....	149.2	66.7	45.6	64.4	16.16
Feb. 1.....	149.3	62.4	41.8	57.2	15.24
Mar. 1.....	147.3	64.5	41.9	56.8	14.28
Apr. 1.....	133.5	63.0	39.3	54.4	13.61
May 1.....	110.7	59.5	36.8	49.2	13.08
June 1.....	127.4	62.5	37.9	51.6	12.52
July 1.....	112.2	62.2	35.6	50.6	12.61
Aug. 1.....	104.8	61.7	33.8	49.4	11.73
Sept. 1.....	101.2	56.2	30.1	47.0	11.70
Oct. 1.....	105.6	51.0	31.0	45.4	11.36

"Readjustments in the farm costs of production are in progress, but labor and marketing costs, taxes, and all items of expense are considerably greater than before the war. Prices for products have decreased relatively more than the cost of production. The purchasing power of the farmer is restricted, with adverse effect on general business, and likewise, through reduction of inbound freight, on the rev-

enues of the carriers. Farming, our chief industry, pays a huge freight bill on both outbound products and inbound freight.

"Translating the purchasing power of the western farmers from dollars into bushels, it is clear that in most instances they must pay a far greater quantity of either corn or wheat than heretofore to secure the important commodities necessary for use in the production of their crops or for sustenance.

"The evidence indicates that in numerous and not unusual instances after deducting other costs the amount remaining from the price received for their crops gives them but from 5 to 25 cents per hour for their own labor and for that of others employed on the farm; that if allowed 15 cents per hour for the time spent in producing crops of hay and grain, many farmers could not pay their taxes or the interest on their investment or mortgage indebtedness. The labor used in transporting their crops by rail to market is, they point out, paid on a much higher basis than farm labor.

"While local conditions, feeding, etc., sometimes exert an influence, the farmer has little control over the price he receives for his crops. In the main these are controlled by prices set at places where the surpluses of all countries meet, and this particularly applies to the Liverpool market control over wheat. With respect to coarse grains, and to a lesser extent hay, prices rest on such primary markets as Chicago, Minneapolis, Omaha, and Kansas City. The usual local prices for grains and hay, even for feeding or consumption, are the prices at the control markets less the freight and handling charges.

"The testimony is that the freight rate now consumes such a large part of the returns of the western producer of these commodities as to be restrictive and burdensome.

"In determining the reasonableness of the existing rates on grain, consideration must be given to changes in conditions since their establishment. As has been pointed out by respondents, many of the basic rates governing the transportation of grain, particularly, in times past have been considered by this Commission and by the state rate-fixing authorities. Generally, these determinations antedated the advent of the United States into the world war. Since the times when the rates were so fixed either by rate-making bodies or by the carriers, many important economic and traffic changes have occurred which lessen the weight which might otherwise now be accorded to the actions of these tribunals. The rates have been subjected to two sweeping and general rate increases, each made in a broad way and largely without reference to the

specific conditions which surrounded the traffic moving under particular schedules. The changes in the economic condition of the industry—its ability to bear the existing rates—have been dwelt upon. Other changes may be pointed out.

"The car-loading of a commodity is of importance in determining the rate, absolutely and relatively.

"Petitioners show a greatly increased loading of grain. At Kansas City, for illustration, in the month of July, 1921, the loading of wheat was 13 per cent, corn 30 per cent, and oats 35 per cent over the loadings in July, 1913. The average loadings per car and the percentages of all traffic on six of the principal western railroads for the year ended December 31, 1920, were shown to be as follows:

	Per cent of total traffic	Average load per car
		Pounds
Wheat	5.14	81,200
Corn	3.17	77,000
Oats	1.73	66,000
Other grain	1.14	64,000
Flour and meal	2.05	64,000
Other mill products	1.43	55,400
	14.66	
Hay, straw, and alfalfa	.96	24,800
	15.62	
Total products of agriculture	20.40	57,800
Products of animals	5.45	23,000
Products of mines	42.96	90,000
Products of forests	9.85	58,000
Manufacturing and miscellaneous	21.34	47,400

"Petitioners present records showing that the loading of wheat, corn, and oats, in 1920, was heavier than the loading of any of 15 important commodities moving in large volume, except coal, and in excess of that of all carload freight; that the average weight of cars employed in transportation is less than the average of those used for hauling citrus fruits and fresh meats, and less than the average for all carload freight; that the movement involves less empty haul; and that the percentage of empty to loaded car mileage is substantially less in the case of box cars than other classes of equipment.

"Respondents submitted analyses to show that the transportation of grain and grain products carries unusual liabilities; that the loss and damage claims are excessive, and are practically double the ratio of payments on other traffic; that the loss and damage claims on grain are disproportionately large compared with the volume of the traffic, and settlements constitute in some instances 35 to more than 40 per cent of the aggregate of such settlements on all traffic, and run into millions of dollars.

"The amount of loss and damage claims normally accruing in the course of transportation is a factor which is properly taken into account in the fixing of the rates for transportation. Presumptively, the facts in this regard as they existed contemporaneously received consideration when the basic rates were established, and for them proper compensation was made. As the values of grain and grain products increased, the money amount of each loss and damage claim naturally increased. Payments by the carriers on this account are an item of operating expense, and, as such, constituted a part of the total increased costs of operation, to meet which the Director General made his increases under general order No. 28, and because of which we permitted the general increases of 1920. But since those increases the values of grain and grain products have shrunk greatly. So far as increased loss and damage claims on account of the movement of these commodities constituted a partial basis for the increases of 1918 and 1920, that basis no longer exists to the same degree.

"There has likewise been a sharp decrease in the values of the coarse grains, both absolutely and relatively, as compared with wheat. Prior to general order No. 28, quite generally throughout that portion of the western group, as defined in Ex Parte No. 74, which lies west of the Mississippi River, the rates on coarse grain were lower than the rates on wheat. The effect of general order No. 28 was to put the coarse grains on the wheat basis, and that basis has been maintained since. The propriety of such action has been sustained in **National Council Farmers' Assos. v. Director General**, 56 I. C. C., 399. It may well be that the action of the Director General was fully justified under the facts then existing, but with the return toward normal values and relationships in values, it is apparent that the continued application of the wheat-rate basis will discourage the movement of great quantities of these coarse grains which formerly moved freely.

"The petitioners have presented exhibits filed by the defendants in **National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.**, 63 I. C. C., 107, showing the average haul and car-mile earnings of grain and various other commodities over the lines of certain representative carriers in the western group. These exhibits are summarized in our report in the case cited, at page 114, and that summary need not be repeated here. Without detailing the results of a study of these exhibits, it seems to be indicated that the earnings on grain traffic are relatively somewhat high. This result would have been modified if a differential basis had been maintained between wheat and coarse grains.

"On the bases of investigation and exhibits in 1915 **Western Rate Advance Case**, 35 I. C. C., 497; petitioners presented an elaborate analysis attempting to develop the operating ratios on the movement of grain and tending to show that such ratios were below the average ratio applicable as to all freight traffic.

"Respondents point out that grain products and hay are of higher grade than sand, gravel, stone, ores, coal, pulp wood, etc., which constitute a considerable part of 'all other traffic' and that the handling of grain and grain products involves extra service and special privileges which add elements of cost. These extra privileges relate to transit, free time and freedom from demurrage charges, holding and switching cars for official inspection, and reconsignment and diversion in connection therewith. Special increased costs are those incurred to keep box cars in suitable condition, to install, distribute, salvage, etc., grain doors, and for out-of-line and indirect hauls under transit, or to reach the industry and then the market of the products. Certain of these services and expenses do not differ materially from those incidental to other commodities or expenses connected with their transportation, and other expenses indicated may be regarded as the equivalent of current maintenance.

"While not contending that the distress of the grain, grain products, and hay producers is wholly attributable to the present level of freight rates, petitioners urge that a reduction in haulage charges would make it possible for consumers to buy hay, oats, corn, etc., and would result in increased movement and the saving of these commodities for society; that the producers would realize financial benefit and have increased purchasing power which would favorably react on the railroads through increased inbound freight. On the other hand, respondents deny that such a reduction would stimulate demand, because, they say, it would probably not reduce prices to the consumer. If the movement were stimulated temporarily, it is contended that the downward trend of prices would be continued because of the surplus of certain grains, held without any visible demand. As prices are now at a low point, respondents doubt if a reduction in rates would increase feeding or consumption. They make the claim that the agricultural industry is in little different condition from other producing or manufacturing industries, and that the railroads themselves have not received during the last year within 50 per cent of the rate of return prescribed by Congress.

"While consistently opposing any reduction in the rates on hay and grain, the respondents take the position that the relief sought by the petitioners is wholly insufficient in

amount to yield any real relief to the average individual, who, collectively with other average individuals, constitutes the agricultural industry, and would not aid him in his distress. Obviously the relief sought is more material in the aggregate to the farmer at a greater distance from market than to one who ships for shorter distances. Based on the 1910 census, it was calculated that the annual savings per farm would range, in round figures, from \$10 to \$50, dependent upon the distance from market. Respondents seek to show that such a change would be less per bushel than frequent daily fluctuations in market prices of these grains.

"Voluminous and exhaustive studies have been presented by the petitioners and respondents, analyzing the important results of operation. The details vary as to particular roads; and, as we are dealing with the roads as a whole, it is unnecessary to set out the significant statistics as to individual carriers, although they have been given consideration.

"A special study of grain, grain products, and hay and straw traffic made by western railroads, representing 85,-158.10 miles, for the eight-months period ended April 30, 1921, was presented. It may be summarized:

	Revenue tons carried	Average haul	Average revenue per ton	Average revenue per ton-mile
		Miles		Cents
Total traffic	389,882,552	214.21	\$2.96	1.382
Grain and grain products	50,747,760	300.20	3.32	1.106
All other traffic	339,074,792	201.34	2.91	1.444
Hay and straw		242	3.74	1.545

"Respondents have undertaken to show that a saving greater than the rate reduction sought by petitioners can be accomplished by improvements in the system of marketing the crop. Suggestions are made as to profits, seemingly large, and possibly inordinate, realized by elevators in the country and at terminals; however, these facts are not clearly determinable from the showing made. Without decrying the desirability of improvements in this regard if they can be accomplished, it is not necessary for petitioners to have obtained a perfectly economical system of marketing before they call the reasonableness of their rates to our attention. It may be observed that if the maximum relief obtainable through this source, as estimated by the carriers, were to be obtained, the condition of the agricultural industry would be only partly alleviated.

"The facts disclosed in the record make it appear that grain and grain products and hay, on the whole, are bearing a share of transportation charges which is disproportionate.

"The financial circumstances of the carriers before us have been developed of record at great length. We deem an extended summary of this evidence unnecessary, for the essential conclusions are few and well known. Commencing about eight weeks after August 26, 1920, when the increased rates authorized in Ex Parte No. 74 became effective, the volume of traffic decreased sharply, suddenly, and unexpectedly, but the trend became upward in the mid-summer of 1921. To this precipitate decline in traffic must be attributed the failure of the carriers to receive the aggregate revenue from operations, which it was calculated, would follow the increases so permitted. Neither during the calendar year 1920, nor during the 12 months following the increases, did the carriers, either in the country as a whole, or in the western or mountain-Pacific groups, earn an aggregate net railway operating income over about one-half of 5 1-2 per cent of the value of their property as tentatively fixed by us.

"In the first five months of 1921, the western roads suffered more severely from general reversals than the eastern or southern roads. The decrease in net ton-miles was 26.03 per cent for western, 18.27 per cent for eastern, and 19.52 per cent for southern roads. Taking the nine-months period beginning September 1, 1920, and ended May 31, 1921, the decrease in freight traffic of the western roads was 27.68 per cent. The relative level of operating expenses was kept up by the mounting of the prices for certain essential materials and supplies, notably coal, and the maintenance of such high prices during a considerable portion of the first year of trial of the new rates. Analyzed on an operating basis, respondents show that materials and supplies which in 1916 cost 72.6 cents per ton-mile transported, in the last quarter of 1920 cost \$1.4201. Fixed charges of course did not shrink as did traffic and operating revenue.

"Respondents compare the quantity of labor employed in 1920, and the compensation, with like items in 1916, which is taken as a normal year. Their analysis covering all class-I roads in the United States indicates an increase in total compensation from \$1,468,576,394, in 1916, to \$3,698,216,351 in 1920. The number of employes increased 23.36 per cent; number of hours worked, 6.99 per cent; number of days worked, 13.36 per cent; average compensation per hour, 139.21 per cent; average compensation per day, 101.97 per cent; and average compensation per employee, 104.04

per cent. This comparison does not fully reflect increases in labor costs, as a 21 per cent increase in wages authorized by the Railroad Labor Board was in effect only 7 months of 1920.

"The respondents estimate that equating to a full year the results for the nine months commencing September 1, 1920, the net railway operating income of the western class-I roads yielded a return of 2.78 per cent; freight operations, 2.54 per cent; and passenger operations 3.43 per cent. They estimate the return for the first five months of 1921 as being at the annual rate of 1.64 per cent. The returns are stated in relation to the value set out in our findings in Ex Parte No. 74, which applied to all railroads in the western district. The reports made by the respondents for the months following those shown indicate a much more favorable return. Thus, making allowance for seasonal variations, the monthly reports of class-I roads for August, 1921, show a return at the annual rate of 6.47 per cent for the western steam roads and 5.02 per cent for the whole United States. The claim is advanced that the actual results are less favorable than appears, because important maintenance work has been postponed which would normally have been performed. This undermaintenance is estimated by respondents to be at the rate of \$188,000,000 per annum. Maintenance in recent months apparently has not been markedly subnormal. The expenditures by the western class-I roads for June, July, and August of the present year are substantially double the average expenditures for those months in the test period.

"Since our decision in Ex Parte No. 74 the wages and working conditions of the employees of the carriers have been considered by the Railroad Labor Board, and many questions relating thereto have been determined by that body. On July 1, 1921, there became effective reductions estimated to average about 12 per cent in wages, and certain changes in labor rules and working conditions have also been accomplished which have lessened expense. For the entire country and upon the basis of a normal number of employees it is estimated that these reductions in wages and changes in conditions now in effect will produce a saving about \$425,000,000 per year, and that of this amount about \$160,000,000 will accrue in the western and mountain-Pacific groups.

"The cost of important commodities which enter largely into the operating expense accounts of the carriers has also decreased. With some important commodities, as, for instance, coal, the change is not yet marked as to some carriers—others have for several months shown noticeably

decreased fuel costs. Many other commodities have receded to price levels approaching those of prewar times.

"Neither the diminished cost of labor nor the diminished prices of materials and supplies have yet been reflected as completely in operating expenditures as must occur. Certain of the readjustments of labor rules and working conditions which have been made possible by orders of the Railroad Labor Board have not yet become fully effective. Term contracts for supplies, entered into at high price levels, still are holding the operating expenses of various carriers to levels which must be accepted as abnormal. With the expiration of these contracts, lower future costs are reasonably to be expected.

"There is also every indication that the volume of traffic is on an increasing curve. This is evidenced by the steady increase in the number of carloads of revenue freight and the reduction in the number of surplus cars.

"We are to administer, and, so far as possible, give force and life to all the provisions of the interstate commerce act. Section 1 requires that no more than just and reasonable rates for transportation be exacted, and in determining what is just and reasonable it has always been recognized that, among other factors, not only the cost of the service, but its value to the user, must be considered. In the exercise of our power to prescribe such rates, however, we are now required by section 15a to initiate, modify, establish, or adjust rates (as that term is defined in the section) so that carriers as a whole or in designated rate groups will, under proper standards of operation, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation.

"Summarizing the situation before us, petitioners speak for a basic industry which the evidence shows is in a state of financial prostration, receiving for its products prices which approach and in some cases have fallen below prewar levels, but paying transportation costs many of which are still at the war-time peak. On the other hand, the evidence shows with equal clarity that respondents are likewise suffering from financial depression and that their net earnings have been far below the standard which has been fixed by the law, although the tendency is now upward. It becomes necessary to consider whether rate reductions may be made on grain, grain products, and hay in western and mountain-Pacific territory which will be fair and lawful so far as the carriers are concerned.

"The purpose of section 15a was undoubtedly to better stabilize the credit of railroads, reassure investors, and

attract capital to the railroad industry. It is plainly our duty to do everything in our power to carry out this purpose. The experience of the past 12 months, however, has shown the limitations which surround in actual practice the operation of this provision of the law. The increases of 1920 were intended to give the carriers the specified return, and no doubt they would have done so if the volume of traffic had remained normal. Instead, it fell off sharply, and net earnings failed by a considerable margin to reach the desired mark. Nevertheless, when it became apparent that this would be the case, carriers and shippers alike agreed that it was not our duty, under section 15a, to raise rates to still higher levels. To have done this would clearly have been a vain thing, harmful alike to the country and to the carriers. The rate adjustment can not with advantage be made dependent upon fluctuations in traffic.

"It is also to be noted that the duty cast upon us by section 15a is a continuing duty and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. We are not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of our rate-making power the result shall reflect our best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return.

"The conditions with which we are called upon to deal are extraordinary and unique, since they are the aftermath of a world catastrophe. The sufferings of the western farmers may be ascribed to that fact. The prostration of agriculture in this country is the product of world-wide forces. The high level of freight rates has been an obvious and tangible circumstance which has quite naturally been a target of dissatisfaction, but we are not persuaded that it has been more than a minor factor in bringing about distress.

"The important thing at present, however, is not the source of the disease but the means of recovery. Whatever part freight rates may have played at the outset, many qualified to form an opinion entertain the view that the present level of these rates is one of the obstacles in the way of returning prosperity and likewise one of the obstacles to substantial reduction in the cost of living. The facts that many railroad charges are still levied at the war-time peak and the cost of living in some respects has not fallen far below it are alike the cause of discouragement to the producer who has been unable to maintain his own prices and to the employee who has experienced a reduction of wages.

"The really vital concern of the carriers, in this situation, is to promote the return of what may be deemed normal traffic, and anything which will help toward this end is greatly to their benefit. So far as a tendency downward in their rates can be induced, and so far as the reductions in wages and prices which have already been made effective can be converted into rate reductions, we are assured that the full return of prosperity will be hastened for both industry and labor. The carriers have, we feel, themselves manifested a realization of this fact in the substantial reductions in rates which, from time to time in recent months, they have voluntarily made.

"The case before us relates only to certain basic commodities. Necessarily our findings and orders will be so confined. In reaching our conclusions we have taken into consideration, among other things, the facts of record in regard to the present status of these commodities and of their production and marketing, the vital importance of the industry which they represent to the country as a whole, the reductions in operating expense which respondents have experienced since our decision in Ex Parte No. 74, and the present trend of traffic. They are, in brief, conclusions which look to the future, in accordance with the intent of section 15a, and which are based upon our best judgment as to what will produce the best results for all concerned, including the carriers.

"We find that the present rates on wheat and hay involved herein will be for the future unjust and unreasonable to the extent that they may individually include more than one-half of the increases authorized in Ex Parte No. 74. We further find that the present rates on coarse grains will be for the future unjust and unreasonable to the extent that they may exceed rates 10 per cent less than those herein prescribed as just and reasonable on wheat from and to the same points. This finding is not in harmony with that in *National Council Farmers Asso. v. Director General, supra*, but is based upon the present record, which shows a present different relationship of value between wheat and coarse grains than was developed in the cases mentioned, and refers to a normal condition.

"We further find that the rates on commodities recognized as products of the above commodities will be for the future unjust and unreasonable to the extent that they exceed rates that would be made by continuing the relationships that now exist, except that where differentials are observed and were subjected to the percentage increases the differentials should be reduced proportionately with the rates.

"The reduction in rates here required may make desirable some reductions in rates east of the western district, particularly interstate in Illinois.

In *Increased Rates, 1920, supra*, at page 252, 253, we said:

'There are in the middle west a number of important grain markets through which it has been customary to maintain an equalization of the rates from important producing states to important consuming regions, under which the sum of the rates into and out of the various markets is in most cases equal. This adjustment differs from an ordinary differential basis in that it is in substance providing an equal through charge over various routes between the same points by the use of sums of proportional rates rather than the establishment of joint through rates or of transit. The application of different percentages in the various groups will result in dislocation of this equalization.

'Carriers and shippers unite in recommending that this equalization be continued because of the keenly competitive situation of the various markets and of the lines of railway serving such markets. However, sufficient detailed information to cover fully the situation is not before us upon this record. We find that the grain rates into and out of these markets may be increased by the general percentages herein approved, with the understanding that the carriers will, within 30 days after the service of this report, file tariffs restoring the equalization through the grain markets now enjoying that basis. This should be done after conference with interested shippers, and, if desired, we will lend our cooperation in the premises.'

"It is expected that similar readjustments will be made in this case. For instance, it will be desirable to equalize via Louisville and other Ohio River crossings, in accordance with the usual practice, the through rates from the west to the south via St. Louis and Memphis.

"An order will be entered in accordance with our findings if that becomes necessary. We shall except the reductions to be made as soon as practicable and not later than November 20, 1921. The same disposition of fractions may be made as in *Increased Rates, 1920, supra*, at page 255. Rates in conformity herewith may be published to become effective on not less than five days' notice. This permission, however, applies only to the respondents and commodities before us. If necessary, interested parties may

bring to our attention any outstanding orders of this Commission which may require modification to permit prompt and full compliance with our findings.

Potter, **Commissioner**, concurring:

"I concur in the majority report although in my opinion there is uncertainty as to whether we are doing the right thing. The report does not recite all of the considerations which influence my vote. This fact, coupled with the fact that we are dealing with fundamentals which go far beyond this particular case, prompts me to file a separate expression of my views.

"At a time when our railways are charging lower rates and paying higher wages than carriers of other countries, it takes a lot to explain an order requiring a rate reduction when the earnings of the carriers are much less than the minimum fair return which the law prescribes.

"I have the keenest appreciation that we must be watchful and alert to see whether our action is beneficial or harmful. Our action will be wrong and will need prompt correction, if the results of recent and further needed readjustments respecting operating costs do not strengthen the carriers. So far for the current year net earnings have been insufficient to compensate the carriers for their services, in the amount which the law has fixed as a fair return upon the value of their properties used in the public service of transportation. If future operating results are no better than those of the past nine months, the carriers will be unable to maintain their efficiency and render the service which is vital to the public welfare—ignoring entirely the element of common justice to the owners in the way of a fair return upon their investments. In the public interest, as well as in fairness to the carriers, there must be done without delay whatever is necessary to so improve their operating showing as to protect their credit, restore confidence, and attract new money to make betterments for which there is urgent need. To require a rate reduction under such circumstances is for us to assume a grave responsibility. Notwithstanding the risk involved, we must be guided by our best judgment, and I am convinced that a reduction should be made.

"It is not clear to me that the savings made in the matter of wages and other costs since we decided Ex Parte 74 have been sufficient to justify the present reduction in its entirety, but those savings, with further prospective savings, do, in my opinion, justify our findings. The prospective future reduction of wages and other operating costs are, perhaps, more essential to justify the rate decreases than the reductions that already have been realized. I am led to concur in the report by a firm conviction that the

transportation burden on the industry and commerce of the country is too heavy and must be reduced, and that, as a part of a needed general readjustment, it can be reduced with increase of net earnings. I believe increase in traffic and a reduction of operating costs may be expected, and that increased net earnings to the carriers may be looked for.

"Practically everyone admits that rates are too high. Rates too high are unjust and unreasonable and under the law must be reduced. Those who justify present rates regard them as a necessary evil—something that must be tolerated because high costs of operation prevent their reduction. That is no justification. If operating costs are holding rates at a level too high, the thing to do is to reduce the costs.

"Almost everything has been too high. The fundamental trouble with the industrial and commercial affairs of the country is that there is insufficient production and costs are too high. The latter is the cause of the former. Production in this country at the present time is far below normal needs. If normal conditions could be brought about, the industries of the country could operate normally for a long period to take care of the markets of this country, to say nothing of the markets in other countries. Normal operation of the country's industries would furnish employment to labor generally, revive markets, and increase the general buying power which the country needs. A reduction of production costs is essential to this result.

"Freight rates are an important element of manufacturing and production costs. Railways are the carriers and conveyors which bind together the different departments of the great national industry in which the finished product of one individual industry becomes the raw material of another. In a large country like ours, with its long hauls and wide distribution of producing industries, it is obvious that the freight burden in its relation to other cost factors must be stable. A disturbance of the proper relation of the cost factors is bound to affect industry and may force changes and relocations which impair the general public and private interest. Until within the last few years the tendency of the factor of transportation cost in relation to other factors has been downward. Recently it has been upward, and it is now out of proper relation to other factors. Rates must be gotten back to the proper relation to other things. They must come down, and whatever is necessary to bring them down must be done.

"Many of the cost factors of railway operation which forced higher rates have been substantially reduced within the last year. The most important item of cost is labor.

The carriers tell us that they are now paying extravagantly high wages. If we may rely upon their statement in this regard, they are not operating their properties economically and efficiently and, therefore, operating costs may further be reduced. We have no jurisdiction over wage controversies, but we may take note of the admission of the carriers and require them to find out whether their wage scales are too high, and to lower them if they can.

"If upon the presentation of the facts as the law requires, the Labor Board decides that wages are not too high, those using transportation will have to pay the bill of the organized railway employees. The shippers of the country and labor generally are entitled to their day in court, and the carriers are the one to present their case, for carriers, shippers, and laborers employed in all of the country's industries which use the carriers are interested in this issue. It is true that the wage burden has increased enormously during the last few years. For the calendar year 1916, it was, for class-I railroads, \$1,468,576,394, which was the largest amount paid for any year in the history of the railroads to that date. Following the year 1916, increases, all of which were made through government agencies, beginning with the Adamson act, followed by orders of the Railroad Administration during 1918, 1919, and the first two months of 1920, and finally the decision in July, 1920, by the Railroad Labor Board, resulted in bringing up the total compensation bill of these railroads for the year 1920, based on the last eight months of the year, to an amount exceeding \$3,900,000,000. They have been reduced by the wage board as of July 1, last, by 10 or 12 per cent. The significance of these wage increases was brought out upon the hearing in this case where it was testified that if the wage burden, as it rests after the decrease of approximately \$400,000,000, as of July 1, were to be reduced by an additional \$1,000,000,000, it would be possible for the carriers to reduce freight rates approximately 18 per cent and still earn the return upon the investment in their property which the transportation act contemplates. Such a reduction, of course, would reestablish railway credit, enable carriers to secure the moneys urgently needed to maintain adequate service, and relieve the distress of disappointed multitudes of investors in railway securities. It was further testified that after such a reduction the organized railway employees would still enjoy an increase which compares favorably with the increase which organized labor in other industries has enjoyed and, of course, far in excess of increases enjoyed by labor generally. It was

further testified that such an increase would be in harmony with the increase of the cost of living which has taken place.

"The right and power to reduce wages rests initially with the carriers. They have no excuse for maintaining the wage levels which they say are too high. If they believe them to be too high, they should take steps to reduce them. Until they make the effort they are not entitled to refer to wages as excusing high rates. The Labor Board was created to determine such questions and shippers have the right to require carriers to resort to that tribunal. Until they have the protection of an award made under existing conditions by the Labor Board, they can not justify the present rates. On the face of things, there is nothing in the wage situation to justify a rate level entirely abnormal and which is menacing the country's welfare. The carriers should bring the general economic situation to the attention of the Labor Board.

"Some urge that we must take wage conditions as we find them, and not contemplate further wage reductions in dealing with rates. On the argument it was pointed out to us by the representatives of the petitioners that such is not the law. They urged upon us that it was the duty of the Commission to consider the broad economic question as to what rates the industry of the country could stand, and that our finding in this regard should be taken into consideration in the fixing of wages. I am inclined to the view that the opinion thus urged upon us by counsel for the petitioners is sound, although it was new to me. It seems to me there is warrant for their view in action which the Labor Board has heretofore taken.

"The transportation machine of the country is being used for the benefit of the shippers and railway employees, and the owners of the machine are receiving much less for its use than the law says they are entitled to. In considering what railway employees should receive, regard should be had what the shippers can afford to pay. The record in this case shows that the Labor Board has declined to give consideration to this broad basic question, and has refused to hear shippers while considering wage controversies. The question as to what rates are fair and reasonable is with us. If the broad economic question as to how much shippers can afford to pay is a question to be determined by us when we fix fair and reasonable rates, it will follow that the Labor Board, in considering wages, would regard our finding as one of the relevant circumstances to be taken into consideration in fixing wages. In this aspect of the case there apparently is necessity for a determination by us as to the proper rate level, and

we are authorized to order a rate reduction without waiting for wages to be reduced, to a point where the carriers can prosper under the rate level which we prescribe.

Lewis, **Commissioner**, concurring:

"The record in this case reveals that horizontal percentage increases in rates on grain, grain products, and hay, made necessary by the emergency conditions under which the Commission acted in Ex Parte 74, have greatly widened the spread between producers who are near and those who are far distant from markets. This widened spread was less felt during the period when prices were high and demand exceeded supply, but its continuance under present conditions will tend to the contraction of producing and marketing areas in the west, where much of the producing territory on which the nation must depend for commercial grains and hay is far removed from markets. We recognized similar conditions in **National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.**, *supra*, and sought to place the far-distant producer on a more favorable basis. Our finding in that case applies with equal force here. The exaggerated spread between the long and short haul rates, under the conditions that face us, will be unjust and unreasonable and, in my opinion, the rate reduction should be so applied as to tend to restore better relationships between producers, as was done in the case cited.

I am authorized by Commissioner Hall to say that he joins in this expression.

By the Commission.

(Seal)

George B. McGinty,
Secretary."

Fourth Section Violations.

While it is a matter of common knowledge that the Federal Act to Regulate Commerce, forbids a higher transportation charge for a shorter than for a longer haul, on the same commodity, moving in the same direction, when the former is contained within the latter, it is not so generally known that the Fourth Section of the Interstate Commerce Act endows that body with the authority to make exceptions thereto. For the purpose of conveying a better understanding of these limitations, the Section of the law is quoted, as follows:

"Sec. 4 (as amended June 18th, 1910, and February 28th, 1920.)

(1) That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, for a shorter than for

a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this Act, but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section; but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and if a circuitous rail line or route is, because of such circuitry, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points; and no such authorization shall be granted on account of merely potential water competition not actually in existence: And provided further, That rates, fares, or charges existing at the time of the passage of this amendatory Act by virtue of orders of the Commission or as to which application has theretofore been filed with the Commission and not yet acted upon, shall not be required to be changed by reason of the provisions of this section until the further order of or a determination by the Commission."

Applications by the carriers to the Interstate Commerce Commission for exceptions to the law, *supra*, are commonly known as "Fourth Section Applications," and are hereinafter referred to as such.

Wool.

On June 14th, 1921, the Transcontinental Freight Bureau filed its application Number 17 "for relief from provisions of Fourth Section of amended Commerce Act in connection with Rates on Wool and Mohair, Carloads, from Pacific Coast Terminals to Points in Eastern Defined Territory," whereby it is proposed to reduce the present rate on wool etc. in grease, from North Pacific Coast Terminals to eastern markets. Boston, for example, from \$1.66 1-2 to \$1.35 per hundred pounds, for the reason, as stated in the application, that "the proposed rates *** are necessary to meet rates available from California ports and from North Pacific Coast ports to Atlantic seaboard in connection with steamer lines operating through Panama Canal, taking into account the value of the superior rail service as well as the expense of moving shipments by water." "Attention is directed to the fact that the present rates from Pacific Coast Terminals are lower than from intermediate points, this adjustment having been authorized by the Interstate Commerce Commission *** May 6th, 1913. Carriers believe this application is necessary only because the various increases made in the rates from both the terminals and intermediate points, and the reductions now necessary from the terminals to meet a more active water competition will result in an increase of the difference between the rates from the terminals and the higher rates from intermediate points."

"The rates quoted from Pacific Coast ports to Atlantic Seaboard by water lines in the Pacific Coast service are as follows:

"Wool, in grease, in bales, 90 cents per 100 lbs. Wool, scoured, in bales, 100 cents per 100 lbs.

"The following information *** is also submitted:

"The rates from the more distant points are water-compelled rates, which in and of themselves are lower than reasonable rates. ***

"Rates as authorized by the Commission in the 'Wool Case,' 23 I. C. C., 151, were established from intermediate points. Subsequently these rates from intermediate points were increased effective June 25th, 1918, under General Order 28, of Director General of Railroads, *** and effective August 26th, 1920, under opinion of Interstate Commerce Commission in 'Ex Parte 74,' these increases resulting in the rates at present in effect from intermediate points; this establishes the fact that the present rates at intermediate points are not higher

than reasonable rates. A rate somewhat higher than the highest rates at present applying from intermediate points *** would not be an unreasonable rate to be established at the terminal points to be the maximum at intermediate points."

The foregoing relates that portion of the carriers' application in favor of lower rates from coast points. The next question that suggests itself is, what will be the basis of rates applying from the interior if this petition is granted? The following is proposed by the railroads:

"From points intermediate to the terminals *** it is proposed to apply rates *** made by adding to the rates herein proposed from the terminal *** the local rate published for use upon interstate traffic from origin point to such nearest terminal point."

In brief, the proposed plan is to charge the intermediate point the Coast rate plus the local from such intermediate point to the coast.

Various hearings were held throughout the Western Country, Montana's case being submitted at Helena on August 19th, 1921. This Board took the position that the rates from intermediate points of origin should be blanketed from Pacific Coast terminals inland to cover all of the wool producing territory of the intermountain region, on the ground that there are no substantial differences in wool production in any of these states: that all western wool growers naturally compete on the Boston Market, and that they should all be given an equal opportunity to reach that market. Opposing the carriers' application on grounds indicated, we developed our case, first—from the standpoint of rate relationship; second—the present economic plight of the industry; and third—the standpoint of the bankers who must finance the industry,—supported by exhibits covering the rate situation.

It will be noted from the language of the statute quoted above, that "The Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed." The testimony offered by the carriers was to the effect that the rates from the Pacific Coast should be "reasonably compensatory" and that the rates from Montana points should be "reasonable per se" and that there was a wide difference in these terms.

A decision has not been rendered by the Interstate Commerce Commission at this writing, and we refrain from hazarding an opinion as to what the outcome will be, but we feel that the Commission will be called upon to exert its utmost analytical proclivities to draw a distinction be-

tween the terms "reasonably compensatory for the service performed" and "a just and reasonable rate for the service performed." To our mind the words "for the service performed" are a very important part of the language in Section 4, and their force should not be lost sight of in the fog that hangs around the words "reasonably compensatory." A reasonable rate for the service performed must be reasonably compensatory, and must bear its share of every item of expense, direct and indirect, that can be allocated against the traffic, including a proportionate share of the carriers' return.

Notwithstanding our conclusion as to the language in the present Fourth Section, we are of the opinion that much valuable time is being lost, and will so continue until Congress removes all ambiguity by making the "long and short haul clause" absolute, i. e. eliminates the present exception thereto.

VARIOUS COMMODITIES.

In the same manner as in the preceding "wool case," the Transcontinental Freight Bureau filed application with the Interstate Commerce Commission on September 7th, 1921, for an order authorizing exceptions to the Fourth Section on fifty-nine commodities, carloads, from eastern territory to North Pacific Coast Points, whereby the present rates to the coast would be reduced varying from two to seventy per cent, but such reduced rates would not apply at any point intermediate to the coast terminals. This application embraces a long list of articles, such as canned goods, carpets, drugs, dry-goods, iron and steel, paint, etc., too numerous to itemize.

Other applications have been filed by this Bureau, proposing reduced rates to North Pacific Coast points on green coffee from New Orleans, Galveston, and New York, approximately 48 per cent and on sulphur, sisal and ixtle (a fibre for manufacturing purposes) about 35 per cent, from points in Louisiana and Texas.

Various hearings have been assigned throughout the United States, commencing at Chicago, November 17th, and concluding at New York the latter part of January, 1922. Hearing at Helena, Montana was held on November 23rd, 1921.

The situation, is much the same as in the wool case, and our opposition and arguments necessarily along the same lines,—namely, that while neither the public nor the state commissions are trying to stand in the way of lower transportation rates, we do contend that freight rates which are apparently attractive to the carriers for long hauls

should be at least satisfactory for the lesser service performed to the intermediate point, even though such rates are prompted by water competition.

The Intermountain states have carried on for years the fight against rates preferential to coast or other cities, having the effect of hampering the development of Montana's resources, and of other states similarly situated. The National Association of Railway and Utilities Commissioners, in convention assembled at Atlanta, Georgia, October 11-14, 1921, this Board being represented by its Chairman, Lee Dennis, having at heart the interests and future of the great Intermountain Region, passed a resolution urging the United States Congress to amend the Fourth Section of the Interstate Commerce Act by eliminating that portion authorizing exceptions thereto; clothing the law in such language as will once and for all emasculate any tribunal of the power to depart from the fundamental principles involved, regardless of whether such departure is claimed on actual or hypothetical competition.

Fruit and Vegetables-Potatoes.

An investigation of freight rates on potatoes was commenced in February, 1921. At that time western Montana had a large surplus seeking a market in St. Louis, Kansas City, and other Missouri River points. Potatoes were then quoted at about \$1.15 per cwt., on the Kansas City market, while the freight rate from Eureka, Montana, for example, including heater-car service, and war tax, was 85.4 cents. This, in addition to commissions, the cost of sacks (about 18c) and labor loading rendered it unprofitable to ship, notwithstanding that the expense of growing had already been incurred. Inquiry developed the information that there was a large surplus of potatoes at many points much closer to these markets and reached by a considerably less freight rate; consequently, while a lower rate would have helped some, western Montana by reason of its distance, was at a decided disadvantage and stood little chance of disposing of its over-production. In view of the supply and demand situation, the carriers declined our recommendation that an emergency rate be established for ninety days, taking the view that such action would constitute an unlawful discrimination against other producing sections of the country, and in the end would not benefit the Montana growers because of the effect it would undoubtedly have on the market. Realizing the futility of trying to relieve the situation by any reasonable rate adjustment this Board set about to make a thorough study of the potato industry in Montana, soliciting the cooperation of the Potato Growers' Exchange, to the end that something might be accomplished for the future.

The record of commercial potato shipments from Montana is:

Year	Carloads
1918	946
1919	458
1920	900
1921	1400 (Estimated)

There is practically no limit to Montana's production of this staple article of food if given economic encouragement; the greatest obstacle to its development is the distance from large consuming markets. The increased acreage in potatoes this year was prompted largely by the general apprehension and hope that the carriers would reduce the freight rates before the season's crop was ready to move, commensurate with the falling price levels of many commodities. In fact if transportation costs continued as then in effect, nothing short of a potato crop failure in other parts of the country would permit of Montana marketing at a living profit, its increased production in 1921. Not only is a market desired for this year's yield, but it is well known that Montana can and does produce potatoes of a quality unsurpassed in the United States, and reasonable encouragement of this industry will mean the standardization of varieties and grades for select markets, and increase tonnage for the railroads from long-haul territory. As a further illustration of the adverse conditions under which the Montana potato grower is laboring, and the utter impossibility of fostering that department of agriculture unless relief is obtained, it is startling to note that during the first half of 1921, potatoes shipped from Bozeman, Montana, netted the grower 9.3 per cent of the price obtained on the Chicago market; furthermore, our investigation showed that many car-loads shipped to Missouri River points did not bring the out-of-pocket cost to the shipper,—Much less the cost and labor of growing; many instances of this kind could be cited. Many car loads (estimated at 200) went to waste during the winter of 1920-21. This condition of affairs was not confined alone to the potato growers: the fruit and vegetable producing regions of Montana, Oregon and Washington found themselves confronted with the same marketing difficulties as related above.

Surely it must be to the pecuniary interest of the carriers to lend their support to the furtherance of an industry that offers to them increased and perpetual tonnage for transportation over hundreds of miles of railroad; and while the carriers cannot and are not being held responsible for market conditions, the latter cannot be set aside when considering the transportation feature,—it must be taken into consideration as one of the elements controlling the entire situa-

tion. Otherwise the inevitable result will be a repetition of waste and continuance of depression in the growing districts.

In order to bring the situation clearly before the Interstate Commerce Commission, that body assigned an examiner to meet and confer with the various organizations and commissions throughout the west, in May, 1921. Montana was represented at a conference held at Yakima, Washington, May 10th. This was not a hearing, merely a conference, and as such the Interstate Commerce Commission could not go farther than to recommend to the carriers, based on the information placed before it, together with remedial suggestions, if any. Accordingly, upon the examiner's return to Washington after conferences at Los Angeles, San Francisco, Yakima, Boise and Denver, all of the information gathered on the subject was transmitted to the executive officers of the transcontinental carriers, and as a result temporary reductions were made effective July 21st and expiring by limitation December 31st, 1921, on vegetables and melons, including cantaloupes, from all western points to destinations east of Chicago, to bring about a maximum rate of \$1.75; the rates then in effect ranging from \$1.83-1-2 to \$2.08 1-2 per cwt. In addition, and governed by the same terms of limitation, the rate on apples was reduced to a maximum of \$1.50 per hundred pounds, not however, permitting of storing in transit.

Without reference to any action taken by the Interstate Commerce Commission, the carriers promulgated reduced rates on potatoes effective October 3rd, 1921, approximately 15 per cent lower than the rates heretofore in effect, to St. Paul, Omaha, Kansas City and St. Louis. This, together with a stronger market than last winter, has materially relieved the situation.

Express Rates.

Following the decision of the Board in Report and Order No. 323, August 1st, 1921, ante, page 64, wherein the application of the American Railway Express Company for a twenty-six per cent increase in express rates, intrastate was denied, the company commenced a discrimination proceeding under Sec. 13, of the Interstate Commerce Act, having for its end an increase of twenty-six per cent on express rates within the State of Montana. Hearing on the company's application was had in Butte, Montana, on November 15th, 1921, before Attorney-Examiner Pattison of the Interstate Commerce Commission. As this report goes to press, the Board has no intimation of what action the Inter-

state Commerce Commission will take. A number of like cases have been heard during the year 1921, but unlike similar cases affecting the rail carriers, decision in all of them has been very long delayed. It is possible, of course, that the Interstate Commerce Commission may take the view that all of said twenty-six per cent increase is no longer necessary, or again, that the express company's operations are not to be covered by the same principles which moved the Commission to grant the rail carriers intrastate advances, notwithstanding state laws. Whatever the outcome may be, the Board will prosecute its fight to put Montana Express rates on a level, at least, with express rates in zones three and five.

CONFERENCE RULINGS

Memorandum on Statutes of Limitation.

The Board is constantly in receipt of communications from shippers and others asking for its opinion as to what statutes of limitation are applicable to claims for loss and damage, and to claims for charges in excess of lawful tariffs on both intrastate and interstate traffic. The Board is not endowed with judicial power nor clothed with authority to award reparation, and anything it might say in interpretation of the statutes must be taken as a gratuitous expression of an administrative tribunal. To avoid the necessity for a multiplicity of individual answers to such letters and queries, however, the Board summarizes the law, as it finds the same after due consideration as follows:

(1)

Interstate Traffic.

A

For Recovery of Charges in Excess of Lawfully Established Rates.

(1) All actions at law by carriers subject to the Interstate Commerce Act, for recovery of their charges, or any part thereof shall be begun within three (3) years from the time the cause of action accrues, and not after.

(2) All complaints by shippers for the recovery of overcharges, when relief is sought by way of the Interstate Commerce Commission, must be filed with the Commission within two (2) years from the time the cause of action accrues, and not after, unless the carrier, after the expiration of such two (2) years or within ninety (90) days before such expiration, begins an action for recovery of charges in respect of the same service, in which case such period of two (2) years shall be extended to and including ninety (90) days from the time such action by the carrier is begun. In either case the cause of action in respect of a shipment of property shall, for the purposes of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after. In the event that the Interstate Commerce Commission orders the payment of money, and payment is declined, a petition for the enforcement of such order shall be filed in the district court or State court within one year from the date of the order, and not after.

(3) While a shipper may commence a proceeding before the Interstate Commerce Commission for an order directing refund of a charge in excess of the lawfully established rate, and in such case his rights are governed

as in (2) above, he is not obliged so to do as the question does not necessarily involve the exercise of jurisdiction particularly confided to the Commission, but does on the other hand, present a judicial question. Accordingly, the shipper may sue the carrier in either the state or federal courts and in such case, the action must be commenced within the time limited by the law of the state where the obligation arose, or as is sometimes said, "the action is governed by the *lex loci contractus*" in an action for money had and received. In this state the statute in such cases is subdivision 3, of Section 6447, which provides that the action must be commenced within three years (*Schaefer v. Miller*, 41 Mont., 417, 109 Pac. 970) presumably from the time the obligation to refund the excess accrues, i. e., from the moment it is exacted as a condition of carriage.

(See Interstate Commerce Act, as amended, Sections 8, 9, 13, 16 and 22.)

B

For Recovery of Claims for Loss of, or Damage to, Interstate Shipments.

For giving Notice of Claim:

Section 20 (11) of the Interstate Commerce Act provides that it shall be unlawful for any common carrier subject to the Act to provide by rule, contract, regulation or otherwise a shorter period for giving notice of claims than ninety (90) days, provided, that if the loss, damage or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim is necessary.

For filing claims:

The same section provides that it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than four months, with the same proviso as above.

Bill of Lading Provisions For Making Claims.

Following these two requirements of the Interstate Commerce Act, the carriers, after agreement with the Commission, incorporated the following provision covering the **making of claims** (and the phrase involves, apparently, both notice and filing) in their uniform bills of lading, and this provision governs today:

"Claims must be made in writing to the originating or delivering carrier within six months after delivering of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within six months (or nine months in

case of export traffic) after a reasonable time for delivery has elapsed: Provided that if the loss, damage or injury was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claims shall be required as a condition precedent to recovery. Suits for loss, damage or injury shall be instituted not later than two years and one day after the day on which notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof, specified in the notice. Where claims for loss, damage or delay are not filed, or suits are not instituted thereon, in accordance with the foregoing provisions, the carrier will not be liable and such claims will not be paid." (Standard form, Bill of Lading Oct. 10, 1920.)

For Institution of Suits for Loss or Damage:

Section 20 (11) of the Interstate Commerce Act as amended provides that it shall be unlawful for any common carrier subject to the Act to provide by rule, contract, regulation or otherwise a shorter period for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

II

INTRASTATE TRAFFIC.

A

For Recovery of Charges in Excess of Lawfully Established Rates.

Actions instituted to recover any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls or charges fixed and established by this Board for such service may be recovered from such railroad by the person or shipper in an action instituted and maintained in the District Court of the county in which such payment was made, provided such action shall be brought within twelve months from the date of such payment.

The foregoing is the language of Section 4389, Revised Codes, Montana, 1907, which constitutes the dominant and exclusive rule on the subject. **Doner v. Northern Pacific** 60 Mont.,—, 199 Pac., 432, decided May 31, 1921.

B**For Recovery of Claim for Loss of or Damage to, Intrastate Shipments.**

The law governing this situation has not been authoritatively settled by the Supreme Court of Montana. In the absence of a precedent, we conclude that actions for loss of, or damage to intrastate shipments are tort actions which must be instituted within three (3) years from the time the cause of action accrues, i. e. three (3) years from the date of loss or injury, pursuant to subdivision 3, of Section 6447, Revised Codes, Montana, 1907.

MEMORANDUM ON JURISDICTION *of* BOARD IN THE MATTER *of* LOSS AND DAMAGE AND OVER- CHARGE CLAIMS.

Since the year of its organization, 1907, the Board of Railroad Commissioners has been importuned by shippers to investigate and collect their claims against carriers for charges in excess of the lawfully established rates, and for loss of, or damage or injury to, shipments of property, whether the movement was interstate or intrastate. Yielding to these requests, the Board has at all times lent its services to the recovery of overcharges, where its investigations showed the same to exist, solely out of a desire to be of as much service to the citizens of the state as possible, and being cognizant of the disadvantages that most shippers suffer in their individual attempts to gain reparation, and likewise it has endeavored to effect settlements for loss and damage claims. The continuance of this policy and the extent to which shippers have sought our aid thereunder have produced the impression, *it seems*, that this Board is invested by statute with some positive jurisdiction in such matters. Indeed where we have declined to handle claims we have in some instances been thought to be unmindful of our duty to serve impartially. The necessity for correcting this erroneous inference, and defining our limitations both legal and otherwise, moves the Board to this announcement of its power and policy.

Jurisdiction.

Loss and Damage Claims.

(1) This Board is not possessed of any power or authority, under the laws of Montana, to entertain, pass upon, consider or in any manner adjudicate claims for loss or damage to shipments moving intrastate or, of course, interstate.

Further, this Board is not possessed of any power or authority, nor is it required by reason of any express legislative enactment to lend its efforts in a friendly spirit, or as a voluntary arbitrator to the settlement of such claims, for either shipper or carrier, or to present the shipper's claim to the carrier, or the carriers' answer to the shipper, or in anywise obtrude itself into the matter of any of such claims.

(2) It is true that the Board has from time to time in the past lent its offices in an endeavor to secure settlement of loss and damage claims, but the nature of such claims involving almost always a dispute of essential facts, and

necessarily depending on the precise ascertainment of attendant facts and circumstances, which can only be obtained after a personal investigation in most instances, for which the Board has no facilities for making and the volume of business in the rate department, makes it impossible henceforward to entertain loss and damage claims for any purpose. The courts are the proper forums for the determination of loss and damage claims. The language of the Interstate Commerce Commission in *Lost or Damaged Freight Replacement*, 43, I. C. C., 257, 258, is applicable here: "The liability of common carriers for the loss or damage to shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commission. This liability should be kept separate from the freight charges. *Larkin Co. v. E. & W. Transportation Co.*, 34, I. C. C., 106-108."

Overcharges.

(1) Under the general grant of power found in Section 4378, Revised Codes, Montana, 1907, which is Section 16, of the original Act creating this Board, and particularly under the mandate that the Board shall investigate any alleged neglect or violation of the laws of the state by any railroad, etc., the Board has (as announced) lent its offices to both shippers and carriers in an effort to effect lawful settlement of overcharge claims. It can not be denied that a proved overcharge on intrastate traffic is a very plain "violation of the laws of the state," and since this Board in effect, and under its power to prescribe reasonable rates, makes the particular laws infringed, it has a direct official interest in their inviolability, and hence is required by necessary implication to investigate overcharge claims and justified in insisting upon refund of an excess charge or additional payment in the case of an undercharge.

(2) While the authority above mentioned is limited to intrastate shipments, the Board will, as a means of cooperating with the Interstate Commerce Commission, entertain as well, proved claims for overcharges arising from interstate shipments, to the extent of presenting such claims to the carriers for payment, or the Interstate Commerce Commission for appropriate action.

(3) Upon receipt of claims for charges alleged to be in excess of the lawfully filed, approved and published tariffs governing the traffic in question at the date of the movement of such traffic, either in intrastate or interstate commerce, this Board will investigate such claims, and if, in its opinion, a case is made out, present such claims to the carrier for payment and thereafter press such claims until specific and peremptory refusal to pay makes manifest that resort to the courts provides the only means of settle-

ment. If, in the Board's opinion a **prima facie** case is not made out the claim will be rejected and the Board will take no further action in the matter.

(4) The following papers must be submitted to this Board as a basis for handling claims for overcharge: (1) original bill of lading (2) original paid freight bill (3) statement of overcharge, with reference, whenever possible, to tariffs, regulations, etc., relied upon to establish the lawful charge. In the absence of the original bill of lading and paid freight bill, the claimant will be required to furnish the usual bond indemnifying the carrier against loss in the event subsequent recovery of the originals or other facts show that the claim is not justified.

Reparation.

The Supreme Court of Montana, has announced, obiter, that the Board of Railroad Commissioners has no power or authority to order reparation for an overcharge or for any act of the carrier in violation of the provisions of the railroad commission law. In **Doney v. Northern Pacific Railway Company**, 199, Pac., 432, 60 Montana,—the court, in speaking of the state law, said:

"The statute differs from the federal act in that under the latter act the Interstate Commerce Commission is expressly authorized to order the railroad to pay to the complainant the sum it may find he has been damaged by reason of an unjust rate or discrimination in violation of the act (36 Stat. 554; U. S. Comp. St. Sec 8584) while under the state act reparation may only be had in a court proceeding based upon the findings and records of the Board of Railroad Commissioners. *** The fact that the Railroad Commission is not authorized, upon determining that a rate is unreasonable or discriminatory, to order reparation, does not prevent a shipper after the rate has been so determined by the special tribunal created for that express purpose, from maintaining an action in court to recover damages sustained by him as a result of such unreasonable or discriminatory rate. His action is based upon the fact that such rate has been so declared by the proper tribunal, and the court merely determines the amount of damages, if any, sustained."

Rate Determinations.

(1) **Where no rate has been established by the Board:**

The law contemplates that every intrastate movement of persons or property is governed by a rate or regulation approved, if not initiated, by this Board. Only in very ex-

ceptional cases is it true that there is no lawfully established rate applicable to a given movement. If it should happen that no existing rate or regulation is applicable to a proposed movement, the shipper or carrier must bring such matter to the attention of the Board with prayer for the prescription of a reasonable rate under Sections 4375, 4376, and 4377, Revised Codes, 1907.

If it should happen that the shipment actually moves under a charge for which there is no lawful foundation whatever in the sense that there is no lawfully existing rate for the movement, or under some charge, which the shipper feels is not applicable, he may petition the Board, pursuant to Section 4377, for a determination as to whether the charge actually made on the basis of a rate thought to be applicable was just and reasonable. The Board can not make a rate retroactive, but on its findings in such a case a basis is laid for court action.

(2) Where any rate is alleged to be unreasonable, unjustly Discriminatory, etc.

While every intrastate shipment must move only under a rate or regulation legally adopted and promulgated by this Board pursuant to Sections 4375, 4376 and 4377, Revised Codes, 1907, and any rate so adopted is *prima facie* reasonable, any rate is open to attack for any reason specified in the act, and such attack must, in the first instance, be made before this Board. The Board must have specifically found the rate reasonable or unreasonable, etc., as the case may be, in a proper proceeding commenced under Section 4377 R. C. 1907, as distinguished from the mere administrative act of adoption and promulgation, before action can be brought in any District Court of this state to have the rate (in reality the order of the Board and the findings on which it rests) condemned or approved.

When the Board has finally determined that a given rate, rate structure, regulation, or practice is reasonable or unreasonable etc., as the case may be, the party aggrieved by such determination may then commence an action in the proper District Court pursuant to Section 4384, Revised Codes, 1907. If the shipper is the plaintiff the provisions of Section 4391, Revised Codes, 1907, govern the action; if the carrier is the plaintiff the provisions of section 4390 govern the action. If the court finds the rate, regulation or practice to be unreasonable, it does not itself declare what is a reasonable rate or assume to make any rate, but the case either by order of court or operation of law, is remitted to the Board which must make a reasonable rate in the light of the court's decision.

(3) Actions to Recover Overcharges.

Actions to recover any sum paid to any carrier in excess of the rates fixed by the Board, may be brought in any district court of the county in which such payment was made, without first obtaining a ruling from, or determination by this Board. These actions are governed by Section 4389, Revised Codes, 1907.

(4) Actions to Enforce Orders of the Board.

These actions are governed by the provisions of Section 4387, Revised Codes, 1907.

Application to Make Refund.

On April 8th, 1921, the Great Northern Railway Company, made application to us for an order authorizing refund to Armour & Company in the sum of \$117.00, being the difference between the lawfully published freight charge on one car of canned goods shipped from Butte, Montana, to Billings, Montana, via the Great Northern Railway, and what the charges would have been via the Northern Pacific Railway between the same points. The application stated that the Great Northern freight solicitor secured this business from Armour & Company, under the impression that the rate was the same via either line, and the error was not discovered until after the car reached Billings. The Northern Pacific Company has the short line, and its rate on canned goods is 62 1-2c per cwt., while the Great Northern having the long line has published rate of 87 1-2c per cwt.

Armour & Company, of course, objected to paying the higher rate, and under the circumstances the Great Northern Company was willing to make refund.

Held, that this Board has no authority to authorize the application of any other than the lawfully published rate on file with this department; to do so would constitute an unlawful exception to the tariff, and the order requested by the carrier must, therefore, be denied. The Board must take the same position as though the request for refund came from Armour & Company.

Claim for Refund of Demurrage Charges.

The Star Lumber Company of Great Falls, Montana, shipped a car of lumber on **straight bill of lading consigned to itself** at Bearcreek, Montana. It arrived at Bearcreek, March 4th, 1921; the carrier's agent surmising that it was intended for the Montana Coal & Iron Company, advised the latter same date, and was informed that the shipment should

be delivered to it. There was no **order**, however, and the agent sought to obtain authority for so delivering, for his own protection.

On **March 15th**, the Montana Coal & Iron Company secured telegraphic authority, and the car was tendered to it, but on account of demurrage charges not being guaranteed, the agent refused to make delivery, and the car was further detained until March 21st. Forty-five dollars demurrage had accrued, which the Star Lumber Company, now seeks to recover from the carrier.

Had the agent at Bearcreek delivered this shipment to other than the original consignee, without an order, and had it developed later that he did so in error, he would, without question, be held responsible. The record shows that he endeavored to get disposition, and also that the Montana Coal & Iron Company knowing that the car arrived on March 4th, and was being held, did nothing about it until the 15th. Thus it will be seen that for **eleven days** the M. C. & I. Co., took no action although it was in possession of all the facts and circumstances, and knew that demurrage was piling up every day. It appears to us that it did not exercise due diligence to straighten the matter out, which could have been done, apparently, before the free time had expired.

We do not find from the information before us, that the carrier was at fault.

Delivering Coal Direct From Cars.

Complaint was made to this Board by Theo. Bresher of Glasgow, Montana, stating that the agent of the Great Northern Railway Company at that station had served notice on him to the effect that under the company's rules he must discontinue delivering coal direct from the cars to his customers.

Upon investigation it was found, that notice had been given to Mr. Bresher as stated above, which action the carrier sought to sustain by reference to what is known as the "Car Peddling Case," 45, I. C. C., 494. In the opinion of this Board the I. C. C. case referred to does not apply in this instance. As a matter of fact the "Car Peddling Case" was brought about by the abuse of equipment used by venders of fruit and vegetables, and Commissioner Harlan in his report dwells upon what he terms "making a sales-room to which the public is invited to do their buying." There is no such circumstance in connection with the prompt unloading of coal, nor do we think it was the intention of the Commissioner to make any ruling against the use of the car by consignee for a reasonable length of time

after its arrival at destination to permit of its unloading. In this position we are evidently supported on pages 499 and 500 of the decision speaking of the inspection and grading of grain and reading" *** involves no invitation to the general public to invade the premises of the carrier to make their purchases from the car." On page 503, we find, "what has been said in the foregoing pages is confined largely to the practice of local merchants, producers, and others of using freight cars as salesrooms." Again on page 504, speaking of the Grange, "this is obviously an entirely different matter *** from the carriers' standpoint the handling, in this manner, of a car-load shipment at destination does not differ materially from a car-load shipment of fertilizer, for example, consigned to an individual farmer and unloaded by him with the assistance of his neighbors ***. We do not understand that the carriers have indicated any particular objection to it, and on the record before us we see no substantial grounds for condemning it ***."

"Vending," according to Webster, is "marketing in a small way-to peddle," and we fully agree that such practices are objectionable; it is not the place for the public, including women and children, to congregate to do its buying, but we are not at all convinced that the practices which gave rise to the decision in 45, I. C. C., 494 are parallel with the case of Bresher, nor that it was ever intended to prevent a dealer from delivering coal direct from a car to his customer to whom he had already sold it.

HELD, that a dealer in coal or any other like commodity, has the right, and is entitled to a reasonable use of equipment at destination, even though by reason of making deliveries to his various customers the car may be held beyond the prescribed free time, under the demurrage rules.

RATE INCREASES—PROCEDURE.

Chapter 37, Laws 1907, establishing the Board of Railroad Commissioners, by Sections 14 and 15, thereof, provided the manner in which freight rates and passenger fares and related charges may be modified or altered in this state. These sections were carried forward into the Revised Codes of 1907, as Sections 4376 and 4377 respectively, and are as follows:

4376. Making schedules effective.—"When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect

at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office, and passenger depot upon its lines; provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the City of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classification; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation or common carrier who may desire it, an opportunity to make an explanation or showing or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classification. All classifications and rates fixed and established by the Board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said Board. Each railroad affected by the provisions of this act shall display in a conspicuous place in each of its stations in this state, a schedule printed in plain legible English type, showing all classifications and rates fixed and established by the said Board. Any failure or refusal on the part of any railroad to comply with the provisions of this section shall subject such railroad to a penalty of not less than One Hundred Dollars, nor more than Five Hundred Dollars for each day that such failure or neglect is continued." (Act February 26, 1907, 14.) (10th Sess. Chap. 37.)

4377. Power to alter classification or rates. Hearing complaint.—"The said Board shall have the power from time to time to change, alter, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered, or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said Board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said Board must within forty days after the filing with such Board of a complaint by a shipper, or other per-

son interested, proceed to investigate and determine the justice and reasonableness of any classification, rate, charge, toll, regulation or order made by said Board." (Act. February 26, 1907. 15.) (10th Sess. Chap. 37.)

On October 22nd, 1915, the Attorney General of Montana, who has since been elevated to the bench of the United States District Court for the territory of Hawaii, rendered an opinion, which was in keeping with the administrative practice theretofore pursued, and which held that amended, altered or new classifications of rates, fares and allied charges might be put into effect by the Board without formal hearing. The opinion referred to is as follows:

"Hon. Board of Railroad Commissioners, Helena, Mont. Gentlemen:

I am in receipt of your communication under recent date, submitting the following question:

'Will you kindly inform the Commission if, in your opinion, the Board of Railroad Commissioners of the State of Montana, has authority, upon the application of a common carrier, to approve any tariff, classification or toll, which would increase the rates, classification or tolls in effect prior thereto, without first publishing a notice for ten days in two daily papers, setting forth in such notice that at a certain time and place the commission will proceed to fix and determine such maximum rates and classification. In other words, has this Commission any authority to approve a proposed tariff or classification increasing the rates of the public without first calling a hearing where the attitude and desires of the shippers and public generally, can be heard and taken into consideration in the approval or rejection of the application.'

"The provisions of the statute involved here are found in Sections 4376 and 4377, Revised Codes of Montana, 1907. The correct solution involved a construction of the clause 'and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates.' Does the phrase 'in the same manner' refer solely to the two weeks' publication of notice, stating the time when such schedule shall become effective, or does it refer also, and include the proviso?

"That before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily

papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications.'

"If the first construction be adopted, rates may be changed without a hearing, and made effective by publication for two weeks of notice of the change, and the date of its taking effect. Under the second construction no rates could be changed without a hearing was first had, as prescribed in the proviso above quoted.

"The general rule is that a proviso in a statute extends only to the matter immediately preceding it, and not to a subsequent matter, unless a contrary intention is clearly shown:

'The operation of a proviso is usually and properly confined to the clause or provision immediately preceding; yet, where necessary to effectuate the legislative intent, it will be construed as applying also to other preceding or subsequent sections, or to the entire act.'

36 Cyc. 1163.

"It is also a cardinal rule of construction that all parts of an act are to be construed together. Courts have also often laid down the rule that the history and purpose of an act may be looked to, to ascertain the meaning and intent of the legislature.

"In this connection it is well to observe that previous to the enactment of this law, and the creation of the commission, the only regulation of rates had been by occasional legislative act. This law was new and original legislation, and intended to cover the whole subject, and to place the entire matter in the hands of a separate tribunal. Previous to its enactment rates and classifications were largely what the railroads had seen fit to make them. Hence, we find the legislature making it the duty of the Commission to adopt as soon as practicable after the organization of the Board, all necessary rates, changes and regulations to govern and regulate freight and passenger tariffs, etc.

Section 4374, Revised Codes, 1907.

"This was the first original classification of rates, and evidently the one referred to in the proviso above quoted. Manifestly the legislature recognized the right of parties to be heard before radical changes were made in a system long established and limited the power of the Commission to put such charges into effect until a hearing had been given. The publication of the notice for two successive weeks, prescribed in Section 4376, was made the general mode by which rates were to be put into effect. The pro-

viso immediately following it was intended as a limitation of its exercise in the case of the first or original classifications, and rates made by the commission.

"This leads to the conclusion that the clause 'and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates,' means that revised rates shall be put into effect by a publication of two weeks' notice as in the case of the original classifications; and the omission of the proviso, or any limitation as to a hearing in the section relating to, and giving power to the Board to , change, alter, amend or abolish any classification or rate, would indicate that the legislature did not intend such limitation.

"There is one argument against this construction, and that is, that rates and classifications might be changed ex parte at the caprice of the Commission. And if this is the effect of the language it would doubtless have to be held invalid, for it would leave the public in much the same condition as to the changing of rates, that they were in before the creation of the Commission, except as to the agency by which the rates were changed. Formerly they were changed at the will of the carriers. Under this construction, if this criticism be good, they would be changed by the mere order of the Commission. Further than this such an effect would probably make the legislation void on constitutional grounds. It is evident, however, that the legislature did not intend such changes to rest entirely on the ex parte judgment of the Commission, for by the last sentence of Section 4377, which provides for the changing and alteration of rates and classification, an investigation is provided for upon complaint of any person feeling aggrieved by such order.

"The said Board must within forty days after the filing with such Board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said Board.'

"This provision coupled with the legal remedies provided for by Section 4390 and 4391, Revised Codes, would give ample protection to all persons concerned.

"I am of the opinion, therefore, that the provision that 'such amended, altered or new classification or rates shall be put into effect in the same manner as original classifications or rates,' refers only to the publication of the notice for two successive weeks, provided for in Section 4376, and that, therefore, rates may be changed, altered, amended or abolished when deemed necessary by the com-

mission, without a notice and hearing. It is to be borne in mind, however, that no revision of rates or change in classifications can become effective until notice thereof has been published for two successive weeks, as provided in Section 7376:

‘When any schedule shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall set the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice.’

“Another limitation in this regard is that:

‘All classifications and rates fixed and established by the Board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said Board.’

Yours very truly,

J. B. POINDEXTER,

Attorney General.”

Following the action of this Board in Re Freight Rate Advance Report and Order No. 294, August 10th, 1920, 13 M. U. R. 63, the Seventeenth Legislative Assembly of the State of Montana amended Section 4377, of the Revised Codes to provide that no increase or raise in freight rates should be made without public notice and public hearing. This amendment is found as Chapter 176, Laws Regular Session, 1921, and is as follows:

Section 1. “That section 4377 of the Revised Codes of Montana, 1907, be. and the same is hereby amended to read as follows:

. ‘Section 4377. Power to Alter Classification or Rate—Hearing Complaint—The said Board shall have the power from time to time to change, alter, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said Board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said Board shall not make or establish any increase or raise in the rate of charge for the transportation of

freight by any railroad within the State of Montana, unless ten days' notice be published in the City of Helena, setting forth in said notice that at a certain time and place the Board will proceed to make and establish such increase or raise in the rate of charge for the transportation of freight; and the Board shall at such time and place hold a public hearing thereon, at which time and place the public generally, or any person, firm or corporation, shall be given an opportunity to present such facts, information or statistics as shall be pertinent to the hearing then being held. The said Board must, within forty (40) days after the filing with such Board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said Board.'

"Section 2. All acts, and parts of acts, in conflict herewith are hereby repealed.

"Section 3. This Act shall be in full force and effect from and after its passage and approval."

Approved March 5, 1921.

Sections 4376 and 4377, Revised Codes 1907, will be found in the Revised Codes, 1921, as Sections 3795 and 3796 respectively.

This statutory system, aside from the requirement of notice and public hearing is cumbersome and expensive, and many times makes for grievous delays in making rates effective. The Board earnestly recommends to the next legislative assembly, the propriety of establishing provisions for rate changes similar to the provisions now found in the Act to Regulate Commerce, as amended.

RATE ADJUSTMENTS

Ice Situation 1920-1921.

On account of the unusually mild winter of 1920-21, verbal reports were made to this Board to the effect that the ice situation would be a serious one during the summer of 1921, especially in certain parts of the state, and that it would be necessary to ship ice by railroad long distances, and further that the freight rates were excessive on this commodity.

We made a thorough canvass of the state, and found that, notwithstanding the unusual winter, there had been sufficient freezing weather in practically all localities so that the ice situation would be about normal. We were unable to find any section of Montana that anticipated shipping ice, while on the contrary, some sections had a small surplus.

Under the circumstances the transportation question was not a serious one.

Rate on Scrap Iron.

Goldberg Hide & Fur Company, Helena, Montana, complained on February 25th, 1921, that the rate on scrap iron in car loads from Helena to Seattle, Washington, 47c cwt., and to Salt Lake, Utah, 43½c cwt., prohibited shipping to these markets.

Upon further inquiry as to what rates would permit the company to ship to these points we were advised that it could not do business on less than 20c to Salt Lake and 30c to Seattle. These latter rates being out of all reason, complainant was notified that it would be useless to take the matter before the Interstate Commerce Commission as it could not possibly be granted.

Rate on Coal—Jackman Spur to Butte.

Chicago, Milwaukee & St. Paul Railway Company made application to the Board on December 29th, 1920, to place in effect freight rate on coal from Jackman Spur to Butte, Montana, \$2.87½ per ton; this rate being 25c per ton higher than from Roundup, Montana, to same destination served by the same carrier.

The distance via C. M. & St. P. Ry. from Roundup to Butte is slightly greater than from Jackman Spur, viz., 257 and 249 miles respectively, and there appearing to the Board no good reason why the rate from Roundup should be exceeded, the carrier was requested to cite conditions why rate of \$2.62½ should not apply, with the result that effective April 15th, 1921, the last named rate was established.

Polson, Montana, Milling in Transit.

Polson Flour Mills operating at Polson, Montana, made application to this Board on June 9th, 1921, for milling in transit privileges at that point on corn and oats west-bound. The application was handled informally with the Northern Pacific Railway Company, and an amendment to tariff issued permitting milling in transit as above at a rate of 4c per cwt., on shipments originating between Yates and Dixon.

Rate on Hay to Twin Cities.

Late in August, 1921, it was reported to us that the territory served by the Great Northern Railway in Montana could market in the Twin Cities (St. Paul and Minneapolis) a large tonnage of alfalfa and blue-joint hay, provided freight rates were granted that would permit of the movement.

Heretofore there has been no hay shipped into Minnesota from Great Northern points in Montana, but on the contrary there have at times been shipments in the opposite direction, depending upon crop conditions; consequently there was no tariff in effect east-bound except the class rates. There was, however, a commodity rate west-bound between these points, and upon our request to the Great Northern Railway Company explaining the situation, the west-bound rates were made applicable in the opposite direction, effecting a reduction of approximately 34 per cent.

Freight Rate on Clay Shale.

The Butte Sewer Pipe & Tile Company, manufacturers of pressed brick, sewer pipe, etc., Butte, Montana, made informal application to this Board on September 17th, 1921, for a reduction in the rate on clay shale from Hellgate, Montana, to Butte, Montana. Applicant explained that this commodity could easily be loaded to 100,00 pounds per car, and that the rate then in effect of \$2.30 per ton was excessive and unreasonable in comparison with rates on this commodity to other manufacturing centers.

It being the opinion of the Board that this rate should be reduced, the Northern Pacific Railway Company was requested to put into force and effect a rate of $6\frac{1}{2}$ c per cwt., minimum 100,000 pounds. The railway company concurred in our position and this rate was established, effective October 20th, 1921.

Slab-Wood, Montana Western Railway.

The Board's order I. & S. B.-3, given in full in this report, ante, page 50, was not directed against the Montana Western Railway Company, for the reason that it was not anticipated that there would be any movement to points on that line.

The Baird-Harper Lumber Company of Worland, Montana, reported on October 11th, 1921, that a market existed at Valier, Montana, a station on the Montana Western Railway, for slab-wood, providing a rate lower than $\$1.95\frac{1}{2}$ per cord were established from Conrad, the latter being the junction point with the Great Northern Railway.

It was informally arranged with the Montana Western Railway Company to put into effect a rate of \$1.15 per cord, Conrad to Manson and \$1.25 per cord, Conrad to Williams and Valier, minimum 15 cords per car, which rate became effective November 3rd, 1921.

Reduced Rates—American Legion Convention.

The American Legion of Montana, on August 23rd, 1921, brought to the attention of this Board, the matter of reduced railroad rates to its National Convention at Kansas City, Missouri, October 31st, November 1st and 2nd. It appeared from the information at hand that the railroads in eastern territory had granted certain concessions for this occasion, but no provision had been made to take care of the western states. Being of the opinion that the matter was not fully understood, we communicated with the Western Passenger Association, at Chicago, for more complete information, and received the following reply:

" * * * the one cent a mile rate was made for day coach travel and should be restricted to within a reasonable radius of Kansas City from which those desiring to attend the Convention would be likely to travel in coaches. For this reason the rates on this basis were not extended to points from which sleeping car service would be preferred, rates for which were fixed at fare and one-third. We believe upon reflection you will realize that those traveling from Montana or other distant territory would much rather pay the higher rate for sleeping car service than to ride in day coaches for such long distances. The carriers do not feel that they would be justified in extending the one cent a mile rate for day coaches beyond the limits where they are now confined, which in a general way, we might say would be from a radius of 600 miles from Kansas City."

This explanation not being satisfactory to the Board, and it appearing that an unjust discrimination existed, and upon the further assurance that the Montana boys would gladly ride in day coaches if granted the one cent per mile rate, we brought the matter to the attention of the states of California, Washington, Oregon, and Utah, on September 19th, recommending that each of them wire the Western Passenger Association to extend the one cent rate to all western states; and at the same time this Board wired the Association elucidating the situation and apparent discrimination, and asking that it be given further consideration. The Railroad Commissions of the above named states complied with our request and took the matter up by telegraph urging the inclusion of the west in any concessions extended to this organization.

On September 24th, not being advised what, if any, action had been taken by the carriers, and the Interstate Commerce Commission having expressed itself as not being authorized to exert its influence, this Board, in rather a lengthy statement of the case, laid the entire matter before the Commissions of Idaho, California, Nevada, New Mexico, Arizona, Colorado, Oregon, Washington and Wyoming, suggesting that if necessary this question of fairness be taken up with Washington with any appeal thought appropriate in the premises. In reply to our telegram October 5th to the Western Passenger Association, asking what had been done, we received the following:

"Western carriers have announced fares on general basis one and one-third of one way fares from points Montana to Kansas City: * * *"

Inasmuch as the time was getting short and apparently no headway being made, this Board on October 6th wired each Montana representative in Washington, and likewise each of the western states above mentioned, that, having exhausted all other means of obtaining the same consideration for our veterans as the Legionaries residing in the eastern and central states, and feeling that we were being discriminated against without just cause, or in fact any cause, and in view of the further fact that the G. A. R. had been granted a one-cent rate for many years, Congress and the House of Representatives jointly appoint a committee to bring this matter, if need be, before President Harding.

The rates were granted October 17th, 1921, much to the satisfaction of the Montana Department of the American Legion.

TRAIN SERVICE.

Train Service, Scobey Branch, Great Northern Railway.

The Great Northern Railway Company, by petition requested an order of this Board to discontinue its daily passenger train service and daily except Sunday freight service between Bainville and Scobey, and in their stead, furnish mixed-train service daily except Sunday, giving as its reasons lack of patronage of its passenger trains, and very

restricted movement of freight at this time. In its opinion a mixed train, daily except Sunday, would furnish the people with "reasonable service."

Many protests were received by this Board, mostly by telegraph, demanding that no action be taken until all parties interested could be heard. We, in the meantime, started an independent investigation of conditions, as well as station earnings at all points on the Bainville-Scobey line. We understand that the Railway Company was the recipient of a greater number and more drastic protests than were we, so much so that we submitted to the people a counter proposition, to continue passenger train service, as at present, except Sundays, and operate freight service tri-weekly. This substitute arrangement was agreeable to all concerned, and accepted by the Railway Company, effective Sunday, May 1st, 1921.

Mitchell Passenger Train Service.

Residents of Mitchell, Montana, and vicinity petitioned for an order to require the Great Northern Railway Company to stop its passenger trains Numbers 235 and 236 at Mitchell when there were passengers to get on or off. This in order that complainants might come to Helena, transact their business and return home the same or following day. Under the present arrangement of train service these people are obliged to stay in Helena two nights.

The request appearing to be a reasonable one was submitted to the carrier with our recommendation that it be granted, and effective May 5th, 1921, instructions were issued to these two trains to stop on flag at Mitchell.

Passenger Train Service Plains, Thompson Falls and Sanders County.

Residents of the above district petitioned for an order for relief from the alleged inadequacy of the Northern Pacific passenger train service between Paradise and the Montana-Idaho state line. Under the schedules of train service then in effect residents from points west of Thompson Falls (the latter being the county seat) were obliged to spend two nights at Thompson Falls even though their business only required a few hours. After much correspondence between this Board and the railway company it was agreed, and so arranged, that east-bound passenger train No. 2 would stop at Thompson Falls for passengers destined to Missoula or east, and that the local west-bound passenger train in the morning leave Paradise one hour and thirty minutes later; this in order to give sufficient time for passengers from west of Thompson Falls arriving on the local east-bound train late in the afternoon, to transact their business and leave Thompson Falls at 9:37 A. M. the following morning.

The above change in schedules became effective June 1st, 1921.

Sumatra Train Service.

The residents of Sumatra, and its environs, filed a petition on June 24th, 1921, praying that the C. M. & St. P. Ry. Co. be required to stop its passenger trains Nos. 15 and 16 at that station.

Upon investigation it appeared that a considerable extent of country to the north was being served from Sumatra, and on account of the mail and passenger service it appeared to us that these trains should stop at that station. An informal arrangement was made with the railway company, and the service requested went into effect July 16th, 1921.

Warm Springs, Montana, Passenger Train Service.

The management of the Montana State Hospital located at Warm Springs, Montana, complained of the alleged inadequacy of the Northern Pacific Railway Company's passenger train service at that station. The matter was handled informally with the railway company, with the result that a rearrangement of the agent's hours in such a way that the depot was open for the accommodation of passengers a reasonable length of time before the early morning and late evening trains, was effected satisfactory to all concerned.

Petition for Improved Passenger Train Service.

By petition the residents of Arlee, Montana, sought to have the Northern Pacific Railway Company stop west-bound passenger trains Nos. 3 and 41 at that station, for the more reasonable accommodation of the public; and for the particular reason to enable the people of Arlee to go to Missoula and return the same day.

A compromise agreement was reached, whereby train No. 41 was made a flag stop at Arlee, due there at 11:12 A. M., whereas, No. 3 is due at that station 1:37 A. M., and would not, in all probability be patronized by local travel.

STATION SERVICE.

Application of the Chicago, Milwaukee & St. Paul Ry. Co. to Close Certain Stations.

The Board's regulations require that its authority must first be obtained before any agency station of the carrier within the State of Montana, is discontinued. Accordingly the C. M. & St. P. Ry. Co. made application for an order to permit the closing of Saugus, Sixteen, Suffolk, Garneill, and Bascom stations, for economic reasons.

Following the custom in such cases, an investigation was made of conditions and all matters involved, to determine the necessity or otherwise of keeping these stations open. Each case was considered upon its own merits, and in accordance with conclusions reached an order was made authorizing the closing of Saugus and Bascom, and denying the right to discontinue Sixteen, Suffolk and Garneill.

Bozeman Hot Springs Closing.

The Chicago, Milwaukee & St. Paul Railway Company made application on April 8th, 1921, to discontinue its agency at Bozeman Hot Springs, Montana, a station in the Gallatin Valley, for the reason that the installation of automatic electrical devices made it unnecessary to maintain a station employe at that point for operating necessity.

Apart from his duties in connection with the movement of trains, it was found that the agent's services were not required, there being but very little business done at that point. Accordingly the carrier was granted the requested authority to close the station forthwith.

Application of Oregon Short Line Railroad Company to Close Certain Stations.

On February 8th, 1921, the above named carrier made application to the Board for authority to discontinue agencies at the stations of Feeley, Glenn, and Bond, Montana, "during the winter months," giving as its reasons, depleted earnings and the necessity for general retrenchment in operating expenses.

Our investigation of conditions, and all matters involved, indicated that the agency at Feeley should be discontinued, while at Bond and Glenn, closing would work a hardship on a large number of people; furthermore the earnings of these stations justified, in our opinion, their continuance.

An order was entered accordingly.

Closing Various Stations, Great Northern Railway.

Basing its application upon depleted total gross earnings, attributable to a partial crop failure in certain sections of the state in 1920, the Great Northern Railway Company on April 19th, 1921, sought an order of the Board authorizing it to discontinue its agencies at the following stations: Tampico, Spion Kop, Dover, Fowler, Madoc, Virgille, Mondak, Enid, Acton, Kevin, Coburg, Laredo, Fort Shaw, Bole, Dunkirk, Merino, Archer, Floweree, and Rossfork.

As stated, the sole reason for this application, as given by the carrier, was the allegation that on account of depressed financial conditions, the earnings of each of these stations had fallen away to a point where the cost of maintaining an agency was not warranted, and that until such time as conditions had materially improved, the very light traffic to and from these points could be satisfactorily handled without the services of an agent, and yet afford to the people what the law contemplates "reasonable service" shall be.

It required no special investigation on our part to become fully informed of the situation in the territory involved in this proceeding. Monthly statements of earnings are filed with the Board by the auditing department of each and every carrier operating within the state, showing the amount of revenue on freight received and forwarded as well as passenger and express business at each station. This information is indispensable in connection with "station service" investigations, and serves as a barometer of the conditions generally in that vicinity. Furthermore, the carrier supplemented its petition with a certified statement of the expense incident to maintaining an agency at each of these points, which showed, in some cases, that the gross receipts would not pay the agent's salary alone.

It will be noted, that this application was made in April, 1921. At that time the indications were favorable for much improved conditions for the ensuing year. Spring had opened up early, and farming activities were much in evidence; in other words the agricultural districts were on the eve of prosperity, in a measure at least, probably to be realized within the succeeding few months. Need for railroad accommodations as one of the great factors in carrying out renewed efforts along development lines, which, if successful would, ultimately revert to the emoluments of the carrier, must be given consideration in the determination of these questions.

For the financial reasons herein cited, the application of the Great Northern Railway Company was granted as follows:

"To close, and keep closed until the further order of this Board, upon the understanding that a custodian will be in charge at each station, and upon the further understanding that the authority hereby extended is of a temporary nature only, during the period of the present financial depression:

Tampico
Spion Kop
Dover
Fowler
Madoc
Virgille

And denied as follows:

"It Is Further Ordered, that in our judgment the earnings of the following stations, considered in connection with their respective locations, and the advent of an early spring with all indications of

a properous season, justify the continuance, and the application to close the same at this time is hereby denied:

Mondak

Enid

Acton

Kevin

"We have not before us all of the information necessary to reach a conclusion in regard to:

Coburg

Laredo

Fort Shaw

Bole

Dunkirk

Merino

Archer

Flowerree

Rossfork

"A full investigation will be made as soon as possible and a decision will be rendered thereafter without undue delay."

The agency at Madoc was re-established on or about September 1st, 1921.

The agency at Bole was closed on or about May 1st, 1921; there being insufficient business, present or prospective, to warrant the expense of an open station.

Stuart Agency, Closed.

Stuart, Montana, is the junction point between the Northern Pacific Main line and its branch line to Anaconda, the latter being under lease to the Butte, Anaconda & Pacific Railway Company. Application was made to this Board on April 2nd, 1921, by the N. P. Ry. Co. for an order to close the station of Stuart on account of the Anaconda Copper Mining Company having closed its smelter at Anaconda.

There is no local necessity for an agent at Stuart, and as a matter of fact the agency is and has been for years, a contractual provision between the Northern Pacific and B. A. & P. Ry. The general public is not interested to any extent, and the application to discontinue Stuart as an open station was granted April 6th, 1921.

Chestnut Agency.

The Northern Pacific Railway Company petitioned this Board for an order to discontinue its agency at Chestnut, Montana, for the reason that coal-mining operations at that station had been abandoned, with resultant depleted earnings to a point where the amount of business transacted did not warrant the expense of maintaining an open station.

The Board being well aware of the conditions at Chestnut at the present time, and for some months past, and upon the record of revenues submitted by the carrier, an order was issued allowing the station to be closed.

Louisville Agency.

Louisville, Montana, is a station on the main line of the Northern Pacific Railway, ten miles East of Helena, located in an agricultural and dairying district. By petition the Northern Pacific Railway Company applied to this Board for an order to discontinue its agency at that point, alleging insufficient earnings at Louisville at the present time, and for several months past, to warrant the continuance of an open station.

Our investigation disclosed that the attitude of the Railway Company in regard to earnings was correct. There appeared to be no prospect for relief in the near future, or at least until another crop had been harvested. It being agreed by the Railway Company to place a custodian in charge of the station to look after the handling of shipments of freight, baggage and express and otherwise protect the interests of the traveling public, the petition to close the station temporarily and until the further order of this Board was granted.

Merrill Agency.

By petition the Northern Pacific Railway Company applied for an order authorizing the closing of Merrill station on account of diminished earnings, and for the further reason that it has been the custom in former years to maintain an agency at that point only during the stock-shipping season.

Upon all of the facts presented by the carrier as to the gross revenue and cost of operation at the station of Merrill, and the Board being fully informed in the premises, the carrier was granted authority to close the station of Merrill forthwith, and to so continue until the further order of this Board.

Marsh and Mossmain, Closing Stations.

By petition the Northern Pacific Railway Company prayed for an order to close the stations of Marsh and Mossmain, alleging depleted earnings to a point where the amount of business transacted was insufficient to warrant the expense of any agency. Our investigation confirmed the plea of the railway company. It appeared that as a matter of fact the agency at Mossmain had been for a number of years conducted as an operating convenience rather than a commercial necessity.

WHEREFORE, In view of conditions existing, the carrier was granted authority to close the aforesaid stations, with the understanding that a custodian will be appointed at Marsh to look after the interests of the public; and they shall so remain closed until the further order of this Board.

Accommodations at Thurlow.

Thurlow is a station on the main line of the C. M. & St. P. Ry. in eastern Montana. By complaint filed February 22nd, 1921, it was alleged that the accommodations were inadequate. In fact there was no depot nor other station facilities. The former practice of using a portion of the section house for depot purposes had been discontinued, consequently, it was alleged that shipments of freight, etc., received at Thurlow were left outside, exposed to the elements and theft; also that passengers waiting for trains were obliged to do so without protection of any kind.

This complaint was handled informally with the railway company with the result that two small buildings were provided, one for the housing of freight, baggage and express, the other for the accommodation of passengers waiting for trains, and we are advised by complainants that the facilities furnished are ample to take care of the business and satisfactorily dispose of the matter.

Receiving and Delivering Freight at Alder, Montana.

Complaints were made to this Board by different parties on or about April 22nd, 1921, alleging unreasonableness of an order issued by the Northern Pacific agent at Alder, Montana, whereby freight shipments would not be received or delivered between the hours of 12 noon and 3 P. M.

Upon investigation it was found that the order in question was issued without the knowledge or consent of the railway company; that the agent had assumed that responsibility, and inasmuch as it worked considerable hardship upon the general public in that vicinity, said order was rescinded May 27th, 1921.

Cobden Station Accommodations.

The residents of Cobden, and that locality, complained that the C. M. & St. P. Ry. Co. had failed to provide accommodations of any kind, at that station, for the convenience and comfort of passengers waiting for trains. There is no town at Cobden, but residents of the country tributary are served from that point. The situation was explained to the railway company with request that relief be granted. Accordingly a small building, convenient for the purpose intended, was constructed, in satisfaction of this complaint.

Milk and Cream Shipments, W. H. Hamilton et. al.

The above named is a rancher residing about two miles south of Chadborn on the Shields River Branch of the Northern Pacific Railway. Mr. Chadborn and others in that locality are engaged more or less in dairying. To reach Chadborn involved a haul of about four miles via a circuitous route to avoid a very steep hill.

Petition was made to this Board to establish a milk loading station on the Chadborn ranch. The matter was handled informally, and agreeable to the Northern Pacific Railway Company, a platform, constructed according to standard plan, was built at the desired location, and accessible to all shippers of milk and cream in that vicinity; likewise, instructions were issued to train crews to pick up the milk and cream, and also return the empty cans to this platform.

SPURTRACKS, CROSSINGS, SIGNAL DEVICES.

St. Regis Track to Mill of the Anaconda Copper Mining Company.

The Chicago, Milwaukee & St. Paul Railway Company made application on May 23rd, for an order to take up what is known as the St. Regis mill track, approximately one mile in length, extending from the town of St. Regis, Montana, to the abandoned saw mill of the A. C. M. Co., which has not been operated for the past year or more.

The records of this Department show that the same application was made by the carrier about a year ago, and was denied for the reason that a considerable quantity of lumber, etc., was stored in proximity to this track, which would later be moved out by rail. We are now informed, however, that all of this material has been shipped away, and there apparently being no other use for the track in question, and the railway company being desirous of using the rails for other purposes, the authority of this Board was given on June 8th, 1921, allowing the track to be taken up in its entirety.

Great Northern Railway Company, Daly's Spur-Removal of.

Pursuant to regulation of this Board, the carrier made application for an order authorizing it to take up the track known as Daly's Spur, approximately three miles in length, constructed several years ago, from a point on the Kalispell Branch, to the saw mill of the State Lumber Company; the latter having ceased operations in that locality, and abandoned its mill.

Investigation showed that this spur had not at any time, nor does it now, serve any other purpose than that for which it was originally built. The track is laid upon land leased for right-of-way to the State Lumber Company, by adjoining ranchers who are now anxious to have it taken up and out of the way, stating that the land is more valuable to them.

Intention of the carrier to remove this spur in its entirety was published generally in daily papers having a state-wide circulation, and the only objection received by this Board was from the Soldiers' Home, located about one mile distant therefrom; it being the intention of the Home to haul its coal and ice from a point where the county road intersects Daly's Spur, thus shortening the distance by wagon haul somewhat. It was found, however, that this plan was not practicable on account of an unsafe bridge on an abandoned road that could not be used. Furthermore the loaded wagon haul would encounter a steep hill, which would more than off-set the greater tonnage that could be hauled by a slightly more circuitous route. The objections on the part of the Home were later withdrawn, and accordingly, there appearing to be no good reason why the track should not be taken up, the application of the carrier was granted by an order of the Board, September 3rd, 1921.

Automatic Electric Signals at Railroad Crossings in Sanders County.

Pursuant to provisions of Chapter 151, Session Laws of 1919, the Board of County Commissioners of Sanders County, state of Montana, petitioned this Board for an order requiring the Northern Pacific Railway Company to install automatic electric signaling devices at various dangerous crossings, to-wit: "near Cedar Spur Ferry; about two miles east of Heron; about two miles east of Perma; east of Woodlin station; Ferry crossing at Noxon; double crossing between Paradise and Plains."

Upon investigation it was found that the crossing designated as "near Cedar Spur Ferry," could be advantageously eliminated by making a change in the county road, thus placing the crossing in the open, and at a point where the installation of warning signals would be unnecessary. After conference between the County Commissioners, and the Northern Pacific Railway Company, the change referred to above was made, thus disposing of that part of the complaint.

The Railway Company recognized the need for protection at all of the other locations mentioned, and agreed in its answer to install signals as soon as the appliances could be secured from the factory. Under date, May 23rd, 1921, the Northern Pacific Railway Company notified us that all of these crossings had been protected in accordance with the petition, and upon further communication with the County Commissioners of Sanders County we are advised, under date of June 16th, that all signals have been installed, and the entire matter taken care of satisfactorily.

Electric Signals at Grade Crossings of Railroad With Public Highways.

Chapter 151, Laws 1919, gives to this Board the authority to order the installation of electric warning signals at highway crossings at grade, under specified conditions and upon petition of any Board of County Commissioners; (see Report and Order No. 313, Docket No. 767 in this issue, Gallatin County vs. Chicago, Milwaukee & St. Paul Railway Company.) Pursuant to the provisions of said

Chapter 151, the Board of County Commissioners of Gallatin County, Montana, filed petition on August 27th, 1920, for an order requiring the Northern Pacific Railway Company to install and maintain an electric signal at the intersection of its tracks with the Yellowstone Trail "just west of" Logan, Montana. Likewise the Commissioners of Broadwater County, on January 11th, 1921, petitioned for an order requiring the Northern Pacific Railway Company to similarly protect its crossing with the public highway at Toston, Montana.

The answer of the railway company in both of the above proceedings admitted the necessity for protection, and agreed to comply with the request of the petitioners. Signals were installed at the Yellowstone Trail crossing, February 11th, 1921, and at Toston on August 2nd, 1921.

Through the unincorporated town of Willow Creek, Montana, the Northern Pacific and the Chicago, Milwaukee & St. Paul Railways run parallel, approximately one hundred feet apart. On October 6th, 1921, Gallatin County through its Board of County Commissioners, filed petition in conformity with the above statute, for the protection of this double crossing by equipping same with automatic electric signals. The Northern Pacific Company promptly agreed to, and did install the necessary appliances; the Chicago, Milwaukee & St. Paul company, however, demurred; Order No. 313 ensued, March 8th, 1921, and the work was completed September 7th, 1921.

Private Crossing.

D. V. Dutro of Dodson, Montana, complained to this Board of what appeared to him to be an excessive charge for putting in a private crossing over the main line of the Great Northern Railway, which passes through his ranch.

This Board has no jurisdiction in the matter of private crossings. There was enclosed with this complaint, however, a statement in detail of labor and material expended by the railway company, and which complainant was asked to pay; an examination of which indicated that possible errors existed. The Board brought it to the attention of the railway company with the result that the total charge was reduced from \$199.71 to \$172.92.

MISCELLANEOUS.

Refund of Passenger Fare Paid.

William Breitenstein of Kansas City, solicited the assistance of this Board to recover from the C. B. & Q. R. R. Co., the price paid for two tickets from Billings, Montana, to Kansas City, Kansas, and Lincoln, Nebraska, respectively, amounting to \$74.07.

Claimant was traveling with the "Auto-Polo Show" carrying its own equipment which required eleven full fare tickets from Burlington, Iowa, to Portland, Oregon, and return. On account of the Pullman Porter neglecting to load claimant's baggage at Spokane, Washington, the latter waited over at Helena, Montana, until his suit cases were forwarded from Spokane. In this way he was obliged to purchase additional tickets for himself and wife from Billings, Montana, as stated above.

When all of the facts were presented to the carrier, refund of the full amount claimed was made without question.

Claim for Alleged Loss in Transit.

George S. Rheem Company of Helena, Montana, referred to this Board on March 9th, 1921, all papers in claim for alleged loss of bulk corn while in transit from Jasper, Minnesota, to Gilman, Montana, movement in November, 1919. Claim was based on difference in weight at destination from that at point of loading, amounting to approximately 2800 lbs.

The record shows that the car in question was loaded at Jasper, direct from farmers' wagons, in drafts, (27 in all) aggregating 99,600 lbs., while at destination the out-turn weight as determined by the sum of numerous deliveries made over platform scales, was only 96,782 pounds.

A very thorough investigation had been made by the Railroad Administration and the Great Northern Railway Company, before the matter was referred to this Board, and the claim was declined for lack of evidence of carrier's responsibility. There was no indication of the car having been in bad order, and the original seals were intact at destination. It is possible, of course, that leakage enroute occasioned the loss, but there is no evidence of such a condition; furthermore there is every likelihood that the difference in weight resulted from error in weighing or miscalculation of allotments. Claimant was advised that in our opinion he had no claim against the carrier.

Loss of Horse.

Alfred Brass of Helena, Montana, complained to the Commission that on May 5, 1920, on the right-of-way of the Great Northern Railway Company at Iron, Montana, his horse was struck by an engine of the Great Northern company and was instantly killed. Mr. Brass endeavored to secure settlement with the railway company for the damage sustained, but inasmuch as he did not consider the amount offered by the railway company sufficient to cover the loss, he appealed to this Board for assistance. The question was taken up with the claim department of the Great Northern Railway Company and damages in the amount of \$125 were procured for him after considerable correspondence.

Claim for Loss of Express.

Leigh Housh of Manhattan, Montana, took up with this Board on January 25th, 1921, the question of payment by the Northern Express Company, for shipment of woolens, Manhattan, Montana, to Salt Lake City, Utah, in June, 1918, apparently lost in transit; claim for reparation having been pending about eighteen months.

This Board has no direct jurisdiction over claims for loss or damage, but in extreme cases we have used our offices to assist in bringing to a conclusion investigations of long standing where there appeared to be no good reason for the protracted delay.

In this particular case we are not advised of the basis of settlement, but under date March 29th, 1921, claimant wrote us that "a satisfactory adjustment" had been made.

Demurrage.

Under the Uniform Demurrage Rules the free time for unloading ore, concentrates, or coal is forty-eight (48) hours, except when the contents of cars are frozen when delivered at destination, in which case the free time is extended an additional forty-eight hours, making a total of four days. In the State of Montana, however, there is

an exception to this rule whereby "the total time actually expended by consignee in heating, thawing or loosening and removing will be considered as free time, but no allowance will be made for detention during the time that no effort is made to unload."

Ore, concentrates, and coal constitute a large percentage of Montana intrastate traffic, and it is a common occurrence for these commodities in the winter months to arrive at destination frozen, necessitating thawing out by steam process before the contents of the cars can be removed.

The Western Demurrage Bureau, under date of April 18th, 1921, took up with this Board the matter of cancelling the Montana exception on frozen commodities, as quoted above, and substituting therefor the standard rule of ninety-six hours, the same as applies on all interstate shipments. This, not only for the sake of uniformity, but for the further reason that under the rules, credits earned by the Average Plan on interstate shipments cannot be applied to offset debits accrued on intrastate movements, or vice versa.

This question being one of state wide interest, it was taken up by correspondence with the larger mining companies, smelting companies, and coal companies, requesting a careful study and an expression of opinion as to the merits or demerits of the suggested change. Much correspondence ensued, and while it has not been possible to communicate with all interests throughout Montana, it is undoubtedly the consensus of opinion that the present plan of applying the actual time engaged in unloading, *supra*, is preferable, and should not be superceded.

We have accordingly notified the Western Demurrage Bureau that no change is desired at this time on Montana intrastate business.

Misrouting of Shipment.

Miss Margaret Muckley of Helena, Montana, purchased a ticket at Minneapolis, Minnesota, on May 18th, 1921, to Helena. In conversation with the ticket clerk in regard to baggage, Miss Muckley stated that she had a box of books to be shipped by freight, whereupon the said ticket clerk issued a claim check on the "Yellow Baggage Transfer Company," together with the information that the box would be called for. It arrived at Helena by express, and this Board was requested to make an investigation and obtain refund of the difference in transportation charges.

The railway company declined responsibility, on the ground that it was not a party to the transaction, simply acting in an accommodative capacity. This, notwithstanding that it had issued the receipt, or claim check, and was, manifestly, negotiating business as the transfer company's agent; on what terms, or by what authority, we are not informed. Upon further presentation of all the facts, the railway company paid the claim; still asserting, however, that "this company had no concern in it."

Tracing Valuable Express Shipment.

W. A. Roush of Manhattan, Montana, solicited the assistance of this Board in locating a valuable package of blue-prints shipped by express from Ranger, Texas, May 27th, 1920, to Manhattan, Montana. The matter was not referred to us until March 1st, 1921, and upon investigation it was found that this shipment reached the "No Mark Bureau" of the express company at Seattle. The plans, however, bore the name of W. L. Steele, Sioux City, Iowa, and after a time the

shipment was forwarded to the agent of the express company at Sioux City for delivery to Mr. Steele. Complainant, Roush, was immediately so informed, and the matter disposed of so far as this Board is concerned.

In this connection we would say, that while we have no jurisdiction in the matter of loss or damage we have at times in urgent cases rendered assistance in the way of tracing shipments such as was involved in this case, but it should be understood in so doing we do not assume any legal authority in the matter.

OVERCHARGE DOCKET.

Refund of Overcharge.

John Corcoran of Eden, Montana, in September, 1920, shipped from Hyskam, Montana, a station on the line of the Northern Pacific Railway to Stockett, Montana, a station on the line of the Great Northern Railway, three cars of stock cattle, and one car of emigrant movables on which charges were assessed and paid in the sum of \$626.24. The matter was referred to us, alleging overcharge, and we found upon investigation that the carriers failed to apply the proper combination of rates in effect at that time. Accordingly we presented claim for overcharge in the sum of \$153.38, which was paid and remitted to claimant on April 30th, 1921..

Claim for Alleged Overcharge.

George S. Rheem Company of Helena, Montana, filed with the Board on March 10th, 1920, claim for alleged overcharge on one car of bulk corn, Inwood, Iowa, to Ringling, Montana, consigned to R. J. Quigley. This car was reshipped from Ringling to Moyne, Montana, and freight charges were paid on basis of combination of local rates based on Ringling; whereas, claimant sought the benefit of the through rate.

The Chicago, Milwaukee & St. Paul Railway Company declined the claim on the ground that the car was set out at Ringling, and actually rebilled to Moyne; that diversion instructions were not given its agent by consignee until after the car had reached its original destination, Ringling. On the other hand consignee made affidavit that reconsigning orders were given carrier's agent before the car arrived; that it was not set out at Ringling, but went through to Moyne in the same train.

The question of merit depended entirely upon whether or not the car was set out at Ringling, and to settle the matter we obtained the record of movement from the C. M. & St. P. Ry. Co.'s car accountant Chicago, which proved that this car was on hand at Ringling three days, namely January 16th to 19th, 1920. Claim was thereupon declined.

Overcharge.

A car of hogs on exhibition at the State Fair at Helena, September, 1920, was returned by Mr. Maurer, at the close of the Fair, to Highwood. In accordance with published tariffs no charges should have been collected from the State Fair grounds to Highwood. However, a switching charge of \$4.12 for the movement from the State Fair grounds to Helena was collected at destination.

This matter was called to the attention of the C. M. & St. P. Railway Company on September 29, 1920, and check in full settlement was received on March 8, 1921.

Refund of Overcharge.

Mrs. H. F. Schrader of Ballantine, Montana, complained to the Board on January 4th, 1921, that she had been overcharged on three tickets purchased at Billings to Hobson, Montana.

Investigation showed an overcharge of \$1.50, and refund was accordingly made by the Great Northern Railway Company.

Refund of Overcharge.

In January, 1921, the Mutual State Bank of Broadview, Montana, submitted to the Board an expense bill covering the shipment of an airplane, purchased by the bank, from Charleston, South Carolina, to Broadview, Montana. The total charges paid on the shipment amounted to \$350.53, and a careful check of the expense bill developed the fact that an overcharge of \$62.05, including war tax, had been made on the consignment. When this fact was directed to the attention of the railway company, instructions were immediately issued to have the foregoing refunded to the complainant.

Alleged Overcharge.

John McRae of Van Norman, Montana, shipped a band of sheep from Nashua, Montana, to Dore, North Dakota, in December, 1919, for feeding, and return to Nashua in the spring of 1920, paying full rates in both directions. Mr. McRae was under the impression that emergency rates were then in effect, for the benefit of Montana stockmen, on account of scarcity of feed, following an unusually dry season.

This matter was referred to the Board on February 15th, 1921. Investigation showed that there had not been an overcharge. Emergency relief rates were in effect at the time this shipment moved, from stations, on the Great Northern Railway Company in Montana to Fairview and other points west thereof, but these rates were limited by tariff provision (I. C. C. Fourth sec. Order No. 7481) reading: "will not apply from or to intermediate points."

Dore, North Dakota, being an intermediate station to Fairview and not specifically named in the tariff, was not entitled to the special rates.

Refund of Overcharge.

March 2, 1920, Albert Olson presented to this Board a freight bill covering shipment of a carload of hay from Larsen, Wisconsin, to Hardin, Montana, and requested the Board to determine whether the charges assessed on this car were in accordance with the published tariffs of the carriers involved. Investigation developed that the consignee had been overcharged to the amount of \$106.81 and the interest pending the settlement of the claim amounted to \$5.19. A check for the total amount, namely \$112.00, was issued by the railway company when the question of the overcharge was presented for its consideration.

Refund of Overcharge.

C. W. Sherrard of Winifred, Montana, shipped a Ford touring car from Casper, Wyoming, to Winifred, Montana, April, 1920, and complained to this Board of the freight charges amounting to \$153.38. Upon investigation we found that this shipment had been overcharged in the sum of \$24.63, and we presented claim to the C. M. & St. P. Ry. Co., for that amount which was paid in full June 4th, 1921.

Refund of Overcharge.

The Kansas-Montana Oil Company of Winifred, Montana, took up with the Board on June 5th, 1921, the matter of apparent overcharge on one car of wrought iron pipe and oil well supplies, Casper, Wyoming, to Winifred, Montana.

The Board presented claim for refund of overcharge to the C. M. & St. P. Ry. Co., on July 20th, 1920. This claim was declined on October 1st by the above named carrier, on the ground, as stated, that the rates on which claim was based did not technically apply. We, of course, could not concur in the position taken by the railway company, and re-entered the claim on October 7th, stating our reasons why the same should be honored, with the result that refund in the sum of \$335.32 was made on February 14th, 1921.

Refund of Overcharge.

The Kansas-Montana Oil Company of Winifred, Montana, shipped a reel of wire cable from Casper, Wyoming, to Winifred, Montana, in March, 1921, and complained to this Board of alleged overcharge. Our investigation showed that the lowest combination of rates had not been applied, resulting in an overcharge of \$30.80, for which amount claim was presented on March 30th, and paid in full on June 7th, 1921.

Refund of Overcharge.

Dr. F. W. Cotton of Lewistown, Montana, shipped a quantity of household goods from Warm Springs, Montana, to Lewistown, Montana, in February, 1921. Having reason to believe that he had been overcharged by the Chicago, Milwaukee & St. Paul Railway Company, this Board was requested to make an investigation. It was found that freight charges as assessed and paid were based on Butte, Montana, whereas, a lower combination was found by using Lombard as the basing point. Claim was accordingly presented for \$8.42, and paid under date of June 14th, 1921.

Refund of Overcharge.

The Treasure State Construction Company shipped from Manhattan, Montana, to Grass Range, Montana, one Caterpillar Tractor, and referred the freight receipt to this Board for investigation, alleging excessive freight charges.

Manhattan is an intermediate station between Bozeman and Grass Range, and upon the ground that the Bozeman distributing rate should not be exceeded from Manhattan, claim was presented to the Northern Pacific Railway Company for refund in the sum of \$5.75, which was paid June 24th, 1921.

Claim for Overcharge.

In November, 1919, G. R. Hamilton of Hilger, Montana, shipped five cars of sheep from Christina to Joliet, Montana, for feeding purposes; the sheep later being returned to point of origin. At that time there was in effect on account of scarcity of feed, an emergency tariff which provided for the return of the shipment at one-third tariff rate.

On August 23rd, 1920, claimant solicited the assistance of this Board, stating that he paid regular tariff rates both ways, and had been unable to obtain refund from the carrier, although his claim had been pending since the month of April. The original documents were apparently not available, and upon securing copies of same we presented claim for \$424.31 overcharge, which was paid in full July 5th, 1921.

Refund of Overcharge.

R. Conquergood of Kolin, Montana, shipped a car of Emigrant Movables and Livestock from Nampa, Idaho, to Kolin, Montana, in March, 1921. He took up with this Board on June 18th, 1921, the matter of alleged overcharge. Our investigation disclosed that the lowest combination of available rates had not been applied to this shipment, and as a result we presented claim to the carriers for \$199.04, plus interest at six per cent, and refund of \$220.15 was made on July 7th, in full settlement.

Rule Mercantile & Butchering Company, Overcharge Claim.

The above named company doing business at Basin, Montana, presented claim for alleged overcharge on two cars of ice shipped from Boulder to Basin, in February, 1921, on which charges were assessed and paid in the sum of \$53.56 each car. It appeared to us that an overcharge had been made; claim was presented to the Great Northern Railway Company in the sum of \$57.68, which was paid in full, July 19th, 1921.

Frank McCarthy, Overcharge Claim.

The above named a resident of Dupuyer, Montana, had shipped, consigned to himself from Akron, Ohio, to Great Falls, Montana, on June 11th, 1920, one box of clothing and books on which he alleged overcharge in rates as well as claim for loss and damage. The total amounted to \$38.67.

This Board does not ordinarily engage in the investigation of claims for loss and damage, but as there was an overcharge for transportation involved the matter was handled as one claim. After considerable delay refund of the above amount was made on July 22nd, 1921.

Refund of Overcharge.

P. W. Woods Company of Helena, Montana, shipped one car of bulk wheat from Louisville, Montana, to Portland, Oregon, on May 28th, 1921. Charges were assessed and paid on minimum weight of 50,000 pounds; claim was filed with the Northern Pacific Railway Company by this Board based on actual weight. Refund in the sum of \$33.20 as claimed was paid on August 9th, 1921.

Refund of Overcharge.

August 30, 1920, Mr. J. E. Bevan, manager for the Equity Co-operative Association of Brady, Montana, wrote the Board on behalf of E. L. Stinson in regard to demurrage assessed on a carload of coal at Brady, Montana. Investigation developed that Mr. Stinson had been overcharged two dollars in the amount of demurrage assessed against this car. The claim was presented to the Great Northern Railway Company and refund of the foregoing amount was promptly made by the company.

Refund of Overcharge.

George D. Mills of Garneill, Montana, shipped five cars of cattle from Judith Gap, Montana, to Edgar, Montana, in October, 1919, via Great Northern and Northern Pacific Railways. These cattle were returned to Judith Gap via the same route in April, 1921.

On account of the scarcity of feed in certain portions of this state in the fall and winter of 1919, special rates were put into effect which provided for one-third of the regular tariff rates on the return movement. The claimant in this case paid full tariff rates returning to Judith Gap, and his claim was presented for the difference. The Northern Pacific Railway Company had made refund of its proportion of the overcharge before the claim was turned over to this Board for investigation. Accordingly we had to deal only with the Great Northern company, and eventually refund of overcharge in the sum of \$182.49 was made on September 13th, 1921.

Refund of Overcharge.

The Arstad Oil Company of Harlowton, Montana, shipped one car of wrought iron pipe from Thermopolis, Wyoming, to Judith Gap, Montana, in December, 1920. On July 5th, 1921, the matter was turned over to this Board alleging overcharge, and upon investigation it was found that the lowest combination of available rates had not been applied to this shipment. Claim was accordingly presented to the carriers in the sum of \$448.73, and paid in full October 4th, 1921.

Refund of Overcharge.

The Homestake Oil Company of Great Falls, Montana, shipped a car of oil well supplies from Lewistown, Montana, to Browning, Montana, in July, 1921, and complained to this Board of apparent excessive freight charges assessed and collected. It was found that this shipment had been improperly classified, which resulted in an overcharge of \$51.60. The claim was paid in full October 7th, 1921.

Refund of Overcharge.

In March, 1920, Clarence Braden shipped two cars of wheat from Walla Walla, Washington, consigned to himself at East Helena, Montana, freight charges being assessed and paid at rate of 56c per cwt.

Alleging overcharge the matter was referred to this Board on February 17th, 1921. Claim was presented to the Northern Pacific Railway Company for refund in the sum of \$244.03 based on rate of 41½c per cwt., this being the combination on Pasco, Washington, figuring as will be noted, 14½c per cwt. less than the rate as billed. The claim was paid in full on October 25th, 1921.

Refund of Overcharge.

The Treasure State Construction Company of Roundup, Montana, shipped two cars of high explosives from Rock Spur, Montana, to Grass Range, Montana, in July, 1920, via the Northern Pacific and the Chicago, Milwaukee & St. Paul Railways. Charges were assessed and paid on basis of rates via Lombard Junction, whereas the shipments should have moved via Deer Lodge; this resulted in an overcharge of \$42.14, for which amount we filed claim on January 29th, 1921, and the same was paid in full November 15th, 1921.

Claim for Refund.

Frank Wesche of Malta, Montana, alleged overcharge in the sum of \$213.47 on a carload shipment of household goods, etc., from Chicago, Illinois, to Malta, Montana. Our investigation showed, that claimant had included in this car a Ford auto truck, which had been reclassified by the carriers, and billed separately at minimum weight

of 5,000 pounds. This we found to be the cause for the additional freight charges, and under the tariffs in effect this truck could not be included at the same rate with household goods, but must take a separate rating as above. There was, therefore, no overcharge, and claimant was notified accordingly.

Claim for Overcharge.

Edward Stoller of Stanford, Montana, complained that he had been required to pay \$19.86 storage on a shipment of castings, which had remained on hand at Stanford station for some time. Our investigation disclosed that these machinery parts were held on complainants request for 47 days. The shipment weighed 1,100 pounds, and after the expiration of the free time allowed the storage rate is $2\frac{1}{2}$ cents per cwt. for the first five days, and 4 cents for each day thereafter; accordingly, the charges amounting to \$19.86 were found to be correct, no overcharge existing.

Refund of Overcharge.

Western Retail Lumberman's Association of Spokane, Washington, solicited the assistance of the Board in the matter of claim against the Northern Pacific Railway Company, involving shipment of one car of logs from Evaro, Montana to Philipsburg, Montana, charges having been assessed and paid on basis of 14c per cwt.

This shipment moved in June, 1920, at which time there was in effect rate of $9\frac{1}{2}$ c per cwt. on logs from Hamilton, Montana, to Philipsburg, with tariff provision that Evaro would "take Hamilton rate." Accordingly claim was presented and refund made of overcharge, viz, \$32.50.

Refund of Overcharge.

Lodge Grass Hardware and Lumber Company of Lodge Grass, Montana, presented claim to the Board alleging excessive charges on one car of coal shipped from Fromberg, Montana, to Lodge Grass, Montana, on which freight charges had been assessed and paid in the sum of \$135.58.

Fromberg is a coal producing station on the line of the Northern Pacific Railway. There is no through rate published from Fromberg to stations on the C. B. & Q. Railroad in Montana, and on the shipment in question class rate was charged. From Bear Creek, Montana, to Lodge Grass the published tariff rate is \$2.75 per ton and Fromberg being an intermediate station the rate from Bear Creek can not lawfully be exceeded. On this basis freight charges should have been \$91.72. Claim was presented to the C. B. & Q. Railroad Company for overcharge in the sum of \$43.86, which was paid.

Refund of Overcharge.

October 4, 1920, Mr. Baldwin wrote the Board that he had shipped from Gardiner, Montana, to Hardin, Montana, one crate of second-hand wagon and one crate of wheels, on which a total of \$59.12 had been assessed as freight charges. Investigation developed the fact that this shipment had been overcharged in the amount of \$32.92. The claim was presented to the Burlington Railroad Company and after considerable correspondence with the Burlington as well as with the Northern Pacific railway companies refund in the foregoing amount was secured.

Refund of Overcharge.

Mr. Irvine, President of the Ranchland Company, presented to this Board a freight bill covering a shipment of baled hay from Pipestone, Montana, to Butte, Montana, with the request that the Board determine whether demurrage of \$6.18 had been properly assessed against the car. Investigation developed the fact that the waybill in some manner had been erroneously dated and that the demurrage was improperly assessed. When the facts were fully detailed to the railway company, refund in the foregoing amount was promptly made.

Refund of Overcharge.

Mr. Keatts shipped a mixed carload of horses and cattle from Custer, South Dakota, to Dutton, Montana, on which a feed charge of \$9.00 was assessed at Billings on the going trip. Mr. Keatts wrote to the Commission and an investigation developed the fact that he had been overcharged \$4.12. The claim was filed with the railway company and refund was secured in the foregoing amount.

Refund of Overcharge.

Mr. Monteath complained to the Board that on September 22, 1920, he purchased a sleeping car ticket for a lower berth from Glacier Park to Great Falls, Montana, on Train No. 44. When he boarded the train at 12:30 in the morning he presented his sleeping car ticket to the conductor, who informed him that all the lower berths in the train had been sold, and inasmuch as he refused to take an upper he presented his ticket to this Board for the purpose of obtaining for him the refund for the amount.

It was alleged in Mr. Monteath's complaint that he had had several experiences of this nature on the defendant railway company line, and the complaint originated a comprehensive investigation by the Board, which resulted in endeavors of the railway company to exercise greater care in the disposition of its sleeping car reservations.

Refund of Overcharge.

The State Highway Commission shipped from Deer Lodge, Montana, to J. E. Soden, at White Sulphur Springs, one caterpillar engine and three trucks, on which an overcharge of \$110.94 was paid. The Board took up the matter of this claim with the railway company and secured a refund of the foregoing amount.

This claim was in process of investigation for a period of six months or more and after refund of the overcharge had been secured an additional amount of \$3.23 was collected as interest charge.

Refund of Overcharge.

The State Highway Commission presented to the Board a freight bill on a motor truck shipped from Fort Benjamin H. Harrison, Indiana, to Deer Lodge, Montana, on which it was alleged excessive charges had been assessed. The freight bill was carefully checked and it developed that an overcharge in the amount of \$64.85 existed. The claim was presented to the railway company and refund in the foregoing amount was promptly secured.

Refund of Overcharge.

On May 7th, 1920, on behalf of the State Highway Commission we filed claim with the Northern Pacific Railway Company alleging overcharge on two car-loads of Packard trucks from Chicago, Illinois, to Deer Lodge, Montana, movement in March, 1920. Our claim was based on an erroneous application of freight rates, and after much correspondence settlement was made in the sum of \$178.03, April 23rd, 1921.

Freight Bills Revised by This Board for State Highway Commission.

In addition to claims handled for the State Highway Commission, as set out in detail in this report, we have audited **before payment was made**, 268 freight bills, which audit disclosed overcharges aggregating \$1,348.74. This amount was thus saved to the state—first-hand—and while these overcharges might have been collected later on through the filing of claims in the regular way, the Highway Commission has expressed its decided preference to first having all of its bills checked by this Board, and thereafter preparing vouchers for payment of the **correct amounts only**.

SAFETY APPLIANCE INSPECTION DEPARTMENT

A comparison of the volume of work performed by the Safety Appliance Inspection Department for the year 1921, with the year 1920, will show that a smaller number of inspections were made during the year just past. The difference is accounted for by the fact that the industrial depression prevailing, not alone in Montana, but in the country generally, resulted in the movement of a smaller number of trains and a decreased use of equipment. On that account the work in this department was curtailed to a certain extent, and for this reason, the services of one inspector were dispensed with on July first, and the duties devolving upon the safety appliance inspectors since that time have been performed by the senior inspector.

The natural query following this curtailment of service is whether the work of this department has been as efficiently performed as it was during the incumbency of two inspectors. The fact that no serious accidents have occurred in the operation of railroads during the past year is indicative, at least, that the work has not been neglected nor the standard of efficiency lowered. For the number of air brake inspections made during the past year, attention is invited to the statistical tables following these pages.

From the comparative statement following, it will be observed that the standard of car efficiency on practically all the roads shows a marked improvement over last year.

In addition to the duties devolving upon the inspectors, under the direction of the Board, other work was performed such as investigating complaints, approximately sixty in number, pertaining to various matters, among the more important of which were the following:

1. Petitions to discontinue, maintain or establish branch line trains.
2. Petitions to discontinue, to continue and to establish agencies at railroad depots.
3. Investigating the distribution of grain cars.
4. Petitions to maintain or discontinue industrial spurs.
5. Petitions to install automatic signal devices at public crossings.
6. Investigating the movement of passenger and mixed trains.
7. Petitions for station facilities.
8. Inspection of sanitary conditions of depots.

Safety Appliance Inspectors Reports.

The following pages contain a summary of the reports of the safety appliance inspectors to the Board. The summary shows the prevailing conditions during the past year of safety appliances on freight cars, passenger cars, and locomotives of railroads operating in Montana.

Safety Appliance Inspections for the Chicago, Milwaukee & St. Paul Railway Company for the year ended November 30, 1921.

Date	Freight Cars Inspected	Freight Cars Defective	Defects	Place	Yard
Nov. 4, 1920.....	255	2	2	Deer Lodge	Main Yard
Nov. 5, 1920.....	315	3	3	Deer Lodge	Main Yard
Nov. 27, 1920.....	310	1	1	Butte	Main Yard
Nov. 10, 1920.....	355	8	8	Miles City	Main Yard
Nov. 23, 1920.....	365	1	1	Deer Lodge	Main Yard
Nov. 24, 1920.....	350	4	4	Deer Lodge	Main Yard
Jan. 20, 1921.....	158	2	2	Lewistown	Main Yard
Jan. 21, 1921.....	158	2	2	Harlowton	Main Yard
Jan. 22, 1921.....	300	1	1	Harlowton	Main Yard
Feb. 1, 1921.....	205	2	2	Three Forks	Main Yard
Feb. 2, 1921.....	165	1	1	Three Forks	Main Yard
Feb. 3, 1921.....	345	4	4	Melstone	Main Yard
Feb. 4, 1921.....	329	2	2	Miles City	Main Yard
Feb. 10, 1921.....	255	1	1	Deer Lodge	Main Yard
Feb. 11, 1921.....	200	1	1	Three Forks	Main Yard
Mar. 3, 1921.....	310	3	3	Deer Lodge	Main Yard
Mar. 16, 1921.....	350	2	2	Melstone	Main Yard
Mar. 17, 1921.....	415	3	3	Miles City	Main Yard
Mar. 18, 1921.....	160	1	1	Harlowton	Main Yard
Mar. 19, 1921.....	232	2	2	Harlowton	Main Yard
Apr. 5, 1921.....	105	None	None	Three Forks	Main Yard
Apr. 6, 1921.....	185	1	1	Deer Lodge	Main Yard
Apr. 12, 1921.....	185	1	1	Butte	Main Yard
Apr. 29, 1921.....	250	4	4	Miles City	Main Yard
May 7, 1921.....	105	None	None	Deer Lodge	Main Yard
May 20, 1921.....	210	3	4	Alberton	Main Yard
May 21, 1921.....	255	5	5	Alberton	Main Yard
July 6, 1921.....	275	4	4	Miles City	Main Yard
July 18, 1921.....	82	3	3	Three Forks	Main Yard
July 19, 1921.....	76	3	4	Three Forks	Main Yard
July 20, 1921.....	146	2	4	Deer Lodge	Main Yard
Sept. 26, 1921.....	40	None	None	Butte	Freight House Yard
Totals	7,446	72	76		

35 Inspections Made.

Freight Cars Inspected	7,446
Passenger Cars Inspected	166
Locomotives Inspected	58

Total Equipment Inspected

Freight Cars Found Defective	72
Freight Cars Per Cent Efficient	99
Freight Cars Defects Reported	76
Freight Cars Defects of Total Cars Inspected	1%
Passenger Cars and Locomotives Inspected	100% efficient

Chicago, Milwaukee & St. Paul Railway Company Terminal Air-brake tests.

DATE	PLACE	Cars in Train	Cars Oper- ative	Cars Cut Out	Cars Cut in That Do Not Apply	Total Inoper- ative Cars	Train Per Cent Efficient
Nov. 4, 1920	Deer Lodge	76	70	None	6	6	92.1
Nov. 4, 1920	Deer Lodge	60	55	None	5	5	91.6
Nov. 5, 1920	Deer Lodge	67	61	None	6	6	91.0
Nov. 5, 1920	Deer Lodge	51	46	None	5	5	90.2
Jan. 13, 1921	Alberton	36	35	None	1	1	97.2
Jan. 13, 1921	Alberton	26	24	None	2	2	92.3
Jan. 14, 1921	Alberton	64	57	None	7	7	89.1
Jan. 14, 1921	Alberton	46	43	None	3	3	93.4
Jan. 15, 1921	Alberton	16	16	None	None	None	100.0
Jan. 15, 1921	Alberton	30	29	None	1	1	96.7
Mar. 16, 1921	Melstone	67	63	None	4	4	94.0
Mar. 16, 1921	Melstone	52	49	None	3	3	94.2
May 20, 1921	Alberton	113	104	2	7	9	92.0
May 21, 1921	Alberton	103	96	None	7	7	93.2
May 21, 1921	Alberton	51	44	None	7	7	86.3
May 21, 1921	Alberton	103	95	1	7	8	92.2
July 19, 1921	Three Forks	18	17	None	1	1	94.4
July 19, 1921	Three Forks	46	38	None	8	8	82.6
July 20, 1921	Three Forks	75	65	1	9	10	86.7
Totals.....	.....	1100	1007	4	89	93	91.5*

*Average Per Cent Efficient.

Safety Appliance Inspections for the Great Northern Railway Company for the year ended, Novem- ber 30, 1921.

Date	Freight Cars Inspected	Freight Cars Defective	Defects	Place	Yard
Nov. 3, 1920	160	None	None	Great Falls	East Yard
Nov. 11, 1920	265	1	1	Great Falls	East Yard
Nov. 12, 1920	265	2	2	Great Falls	East Yard
Nov. 16, 1920	405	9	11	Whitefish	Main Yard
Nov. 17, 1920	360	4	4	Whitefish	Main Yard
Nov. 19, 1920	125	5	8	Rexford	Main Yard
Nov. 20, 1920	305	5	5	Troy	Main Yard
Nov. 23, 1920	208	2	2	Butte	Main Yard
Nov. 27, 1920	66	None	None	Clancy	Main Yard
Dec. 14, 1920	355	1	1	Great Falls	West Yard
Dec. 15, 1920	365	2	2	Whitefish	Main Yard
Dec. 16, 1920	130	2	2	Rexford	Main Yard
Dec. 18, 1920	205	2	2	Rexford	Main Yard
Jan. 4, 1921	260	1	1	Great Falls	East Yard
Jan. 6, 1921	415	19	19	Wolf Point	Main Yard
Jan. 7, 1921	275	5	5	Havre	Main Yard
Mar. 22, 1921	390	6	6	Great Falls	West Yard
Mar. 23, 1921	290	9	9	Havre	Main Yard
Mar. 25, 1921	156	6	6	Cut Bank	Main Yard
Mar. 30, 1921	225	14	15	Wolf Point	Main Yard
Mar. 31, 1921	123	4	4	Rexford	Main Yard
Apr. 1, 1921	151	6	6	Rexford	Main Yard
Apr. 1, 1921	320	3	3	Troy	Main Yard
Apr. 2, 1921	407	15	16	Whitefish	Main Yard
Apr. 13, 1921	110	None	None	Butte	Main Yard
May 4, 1921	225	3	3	Troy	Main Yard
May 6, 1921	360	3	3	Whitefish	Main Yard
June 15, 1921	149	2	2	Wolf Point	Main Yard
June 16, 1921	275	7	7	Havre	Main Yard
June 17, 1921	221	4	4	Great Falls	Main Yard
June 22, 1921	125	2	2	Troy	Main Yard
June 23, 1921	249	9	9	Whitefish	Main Yard
June 24, 1921	175	2	2	Cut Bank	Main Yard
Sept. 1, 1921	130	None	None	Whitefish	Main Yard
Sept. 2, 1921	110	2	2	Troy	Main Yard
Totals	8,355	157	164		

35 Inspections Made.

Freight Cars Inspected	8,355
Passenger Cars Inspected	188
Locomotives Inspected	163
Total Equipment Inspected	8,706
Freight Cars Found Defective	164
Freight Cars Per Cent Efficient	98.1%
Freight Cars Defects Reported	164
Freight Cars Defects of Total Cars Inspected	1.9%
Passenger Cars and Locomotives Inspected	100% efficient

Great Northern Railway Company Terminal Air-brake Tests.

DATE	PLACE	Cars in Train	Cars Oper- ative	Cars Cut Out	Cars Cut in That Do Not Apply	Total Inoper- ative Cars	Train Per Cent Efficient
Dec. 16, 1920	Rexford	40	32	3	5	8	80.0
Dec. 18, 1920	Rexford	39	36	2	1	3	92.3
May 4, 1921	Troy	68	66	None	2	2	97.0
May 5, 1921	Troy	40	39	None	1	1	97.5
May 5, 1921	Troy	69	66	None	3	3	95.6
May 5, 1921	Troy	67	66	None	1	1	98.5
May 6, 1921	Whitefish	55	53	None	2	2	96.3
May 6, 1921	Whitefish	52	48	None	4	4	92.3
June 15, 1921	Wolf Point	32	28	3	1	4	87.5
June 16, 1921	Havre	33	31	None	2	2	93.9
Sept. 2, 1921	Troy	72	70	None	2	2	97.2
Totals.....	.....	567	535	8	24	32	94.3*

*Average Per Cent Efficient.

Safety Appliance Inspections for the Northern Pacific Railway Company for the year ended Nov. 30, 1921.

Date	Freight Cars Inspected	Freight Cars Defective	Defects	Place	Yard
Nov. 23, 1920	85	3	3	Butte	Upper Yard
Nov. 26, 1920	317	1	1	Butte	East Yard
Dec. 21, 1920	325	1	1	Missoula	Main Yard
Dec. 22, 1920	375	2	3	Missoula	Main Yard
Jan. 25, 1921	280	1	1	Laurel	Main Yard
Jan. 26, 1921	180	1	1	Billings	Main Yard
Jan. 27, 1921	355	1	1	Livingston	Main Yard
Jan. 28, 1921	180	None	None	Livingston	Main Yard
Feb. 4, 1921	170	2	2	Glendive	Main Yard
Feb. 8, 1921	365	5	5	Missoula	Main Yard
Feb. 9, 1921	190	1	1	Paradise	Main Yard
Feb. 12, 1921	200	1	1	Logan	Main Yard
Mar. 1, 1921	365	3	3	Missoula	Main Yard
Mar. 2, 1921	320	2	2	Missoula	Main Yard
Mar. 8, 1921	405	2	2	Billings	Main Yard
Mar. 9, 1921	355	4	4	Laurel	Main Yard
Mar. 10, 1921	355	6	6	Laurel	Main Yard
Mar. 11, 1921	165	None	None	Billings	Main Yard
Mar. 12, 1921	360	3	3	Livingston	Main Yard
Apr. 13, 1921	61	1	1	Butte	Upper Yard
Apr. 14, 1921	43	None	None	Butte	Lower Yard
Apr. 14, 1921	82	3	3	Butte	East Yard
Apr. 16, 1921	255	3	3	Helena	Main Yard
Apr. 27, 1921	155	10	11	Glendive	Main Yard
Apr. 28, 1921	255	3	3	Glendive	Main Yard
Apr. 30, 1921	110	13	14	Forsyth	Main Yard
May 12, 1921	220	1	1	Helena	Main Yard
May 17, 1921	280	5	5	Missoula	Main Yard
May 18, 1921	315	4	4	Missoula	Main Yard
May 19, 1921	150	7	8	Paradise	Main Yard
May 20, 1921	210	1	1	Missoula	Main Yard
May 24, 1921	320	1	1	Billings	Main Yard
May 25, 1921	345	5	5	Laurel	Main Yard
May 26, 1921	265	3	3	Livingston	Main Yard
May 28, 1921	265	None	None	Livingston	Main Yard
June 8, 1921	215	1	1	Helena	Main Yard
June 13, 1921	110	None	None	Glendive	Main Yard
July 8, 1921	325	None	None	Missoula	Main Yard
July 21, 1921	228	4	5	Missoula	Main Yard
Oct. 12, 1921	52	3	4	Butte	Upper Yard
Totals	9,528	107	113		

10 Inspections Made.

Freight Cars Inspected	9,528
Passenger Cars Inspected	294
Locomotives Inspected	203

Total Equipment Inspected 10,025

Freight Cars Found Defective	107
Freight Cars Per Cent Efficient	98.8%
Freight Cars Defects Reported	113
Freight Cars Defects of Total Cars Inspected	1.2%
Passenger Cars and Locomotives Inspected	100% efficient

Northern Pacific Railway Company Terminal Air-brake Tests.

DATE	PLACE	Cars in Train	Cars Oper- ative	Cars Cut Out	Cars Cut In That Do Not Apply	Total Inoper- ative Cars	Train Per Cent Efficient
Apr. 28, 1921	Glendive	42	42	None	None	None	100.0
Apr. 28, 1921	Glendive	58	56	None	2	2	96.5
Apr. 28, 1921	Glendive	46	43	None	3	3	93.5
May 17, 1921	Missoula	56	56	None	None	None	100.0
May 17, 1921	Missoula	73	69	None	4	4	94.5
May 18, 1921	Missoula	57	57	None	None	None	100.0
May 18, 1921	Missoula	92	87	None	5	5	94.6
May 18, 1921	Missoula	73	71	None	2	2	97.3
May 20, 1921	Missoula	56	56	None	None	None	100.0
May 20, 1921	Missoula	29	28	None	1	1	96.5
May 20, 1921	Missoula	60	60	None	None	None	100.0
May 24, 1921	Billings	22	20	None	2	2	90.0
May 24, 1921	Billings	58	50	None	8	8	86.2
May 25, 1921	Laurel	50	48	None	2	2	96.0
May 26, 1921	Livingston	70	63	None	7	7	90.0
May 28, 1921	Livingston	57	57	None	None	None	100.0
Totals		899	863	None	36	36	95.9*

*Average Per Cent Efficient.

A Safety Appliance Inspection for the following Railroads for the year ended Nov. 30, 1921.

Butte, Anaconda & Pacific Railway Company.

Date	Freight Cars Inspected	Freight Cars Defective	Defects	Place	Yard
Nov. 6, 1920	151	3	3	Butte	Main Yard
Nov. 8, 1920	230	None	None	Anaconda	Smelter Yard
Mar. 4, 1921	405	None	None	Anaconda	Smelter Yard
Sept. 26, 1921	175	None	None	Anaconda	Smelter Yard
Totals	961	3	3		

4 Inspections Made.

Freight Cars Inspected	961
Passenger Cars Inspected	6
Locomotives Inspected	1
Total Equipment Inspected	968
Freight Cars Found Defective	3
Freight Cars Per Cent Efficient	99.7%
Freight Cars Defects Reported	3
Freight Cars Defects of Total Cars Inspected	0.3%
Passenger Cars and Locomotives Inspected	100% efficient

Northern Pacific and Oregon Short Line-Joint Yard.

Date	Freight Cars Inspected	Freight Cars Defective	Defects	Place	Yard
Mar. 5, 1921.....	205	1	1	Silver Bow.....	Main Yard
Apr. 14, 1921.....	57	None	None	Silver Bow.....	Main Yard
Totals	262	1	1		

2 Inspections Made.

Freight Cars Inspected..... 262

Passenger Cars Inspected None

Locomotives Inspected 1

Total Equipment Inspected 263

Freight Cars Found Defective 1

Freight Cars Per Cent Efficient 99.6%

Freight Cars Defects Reported 1

Freight Cars Defects of Total Cars Inspected 00.4%

Oregon Short Line Railroad.

Date	Freight Cars Inspected	Freight Cars Defective	Defects	Place	Yard
Apr. 7, 1921.....	244	2	2	Lima	Main Yard
Totals	244	2	2		

1 Inspection Made.

Total Freight Cars Inspected 244

Total Passenger Cars Inspected 6

Total Locomotives Inspected 5

Total Equipment Inspected 255

Freight Cars Found Defective 2

Freight Cars Per Cent Efficient 99.2%

Freight Cars Defects Reported 2

Freight Cars Defects of Total Cars Inspected..... 00.8%

Passenger Cars and Locomotives Inspected..... 100% efficient

Defects Classified Covering All Railroads.

RAILROAD	Defective Visible Parts-of-air	Defective Couplers and Parts	Defective Running Board and Parts	Defective Hand Brakes and Parts	Defective Hand Holds	Defective Sill Steps	Defective Knuckle Pins	Defective Ladders	Total Defects	Total Cars Inspected	Total Cars Defective	Per Cent Efficiency
B. A. & P. Ry.	3								3	961	3	99.7
C. M. & St. P. Ry.	44	7	1	3	4	1	16		76	7,446	72	99.0
G. N. Ry.	101	9	11	3	5	2	33		164	8,355	157	98.1
N. P. Ry.	82	8	4	2	5	1	10	1	113	9,528	107	98.8
N. P. & O. S. L. Ry.	1								1	262	1	99.6
O. S. L. R. R.	2								2	244	2	99.2
Totals	233	24	16	8	14	4	59	1	359	26,796	342	98.8*

*Average.

Summary of the Terminal Air-brake Tests on the following Railroads for the year ended Nov. 30, 1921.

RAILROADS	Tests	Cars in Trains	Cars Operative	Cars Out	Cars Out in That Did Not Apply	Total Inoperative Cars	Average Per Cent Air-Brake Power
C. M. & St. P. Ry.	19	1,100	1,007	4	89	93	91.5
G. N. Ry.	11	567	535	8	24	32	94.3
N. P. Ry.	16	899	863	None	36	36	95.9
Total	46	2,566	2,405	12	149	161	93.8*

*Average.

Comparative Statement of Inspections Covering All Railroads for the years 1920 and 1921.

	1920	1921
Inspections made	156	114
Total Equipment Inspected	41,330	27,887
Average Equipment to Each Inspection	264	244
Total Freight Cars Inspected	39,754	26,796
Total Freight Cars Defective	626	342
Freight Cars Per Cent Efficiency	98.4	98.7
Freight Cars Defects Reported	644	359
Defects to Total Cars Inspected	1.6%	1.3%
Total Terminal Train Air-Test Made	106	47
Total Cars in All Trains	5,909	2,566
Total Cars Operative	5,586	2,405
Total Cars Inoperative	323	161
Average Per Cent Train Efficiency	94.5	93.8

During the period when making safety appliance inspections on the different roads, the following number of locomotives and passenger cars were inspected on which no safety appliance defects were found.

	Locomotives	Passenger Cars
B. A. & P. Ry.	1	6
C. M. & St. P. Ry.	58	166
G. N. Ry.	163	188
N. P. Ry.	203	294
O. S. L. R. R.	5	6
N. P. & O. S. L.	1	..
Totals	<u>431</u>	<u>660</u>

STATISTICS

Reports of all Carloads of Commodities Originating at
Montana Stations for Fiscal year ended
June 30, 1921.

Mileage of all Railroads.

(Not Including Those Under Construction)

NAME	Main Line	Main Line Double Track	Branches Sidings, Etc.	Total Owned	Oper'd Under Lease, Etc.	Total Mileage Oper'd	Changes in Mileage Since Dec. 31, 1919
Butte, Anaconda & Pacific.....	25.30	2.28	123.43	151.01	8.94	159.95	.35 increase
Billings & Central Montana.....	12.62		1.55	14.17	2.28	16.45	none
Chicago, Burlington & Quincy.....	134.38		37.73	172.11	77.04	249.15	.16 increase
Chicago, Milwaukee & St. Paul.....	1,235.43	3.61	328.56	1,567.60		1,567.60	2.21 increase
Gilmore & Pittsburgh.....	37.40		2.28	39.68		39.68	none
Great Northern.....	1,745.44	76.51	545.46	2,367.41	17.53	2,384.94	5.11 decrease
Minn., St. Paul & Sault Ste. Marie.....	56.88		4.77	61.65		61.65	.26 decrease
Montana Southern.....	37.78		2.24	40.02		38.80	1.22 increase
Montana Western.....	20.13		3.00	23.13		23.13	none
Montana, Wyoming & Southern.....	28.78		4.83	33.61		33.61	.32 increase
Northern Pacific.....	1,544.11	147.98	577.25	2,269.34	128.91	2,398.25	6.90 increase
Oregon Short Line.....	135.76		34.77	170.53	24.50	195.03	1.51 increase
White Sulphur Springs & Y. P.....	19.32		2.19	21.51	5.63	27.14	none
TOTAL.....	5,033.33	230.38	1,608.06	6,931.77	264.83	7,195.38	7.30 net increase

December 31st, 1920.

Train Accidents and Personal Injuries.

During the past year the Commission has been notified of and has investigated either on the ground at the scene of the accident, when practical to do so, or from testimony of witnesses, depending upon the nature of the casualty, the following train accidents, involving loss of life or personal injury to the extent that the services of a physician were required, all in accordance with Section 16-a, Chapter 37, Laws of 1907.

Year Ended September 30th, 1921.

NAME OF RAILROAD	Passengers			Persons Carried Under Contract or Agreement			Employees		Other Persons					
	K			I			I		Trespassers		Non-Trespassers			
	K	I		K	I		K	I	K	I	K	I	K	I
Billings & Central Montana								1						
Butte, Anaconda & Pacific								2	1					
Chicago, Burlington & Quincy								9						2
Chicago, Milwaukee & St. Paul								41	1	1			1	6
Gilmore & Pittsburgh														
Great Northern								136	2	2			4	17
Minn., St. Paul & Sault Ste. Marie														
Montana Southern								3						
Montana Western										2				
Montana, Wyoming & Southern														
Northern Pacific														
Oregon Short Line								98	3	8			5	17
White Sulphur Springs & Y. P.								3						1
TOTAL		23		1	4		12	293	7	13	10		43	

Pipe Line Transportation of Petroleum.

Montana has been producing oil in commercial quantities from the Elk Basin field, in Carbon County, for several years, but because most of the Elk Basin structure is in Wyoming, and the oil is transported to Wyoming refineries, this production has usually been associated with the other Wyoming fields. The Van Duzen well in the Devil's Basin, Mussellshell County "brought in," in November, 1919, is generally regarded as the "discovery" well in this state. This well was followed in February, 1920, by the Frantz Corporation's well on the Cat Creek Anticline in Fergus County. Cat Creek has since become famous the world over as producing the highest grade oil in the United States. The production has steadily increased each month and the field is now credited with over sixty producing wells.

The formations that produce in Wyoming were known to underly the plains section of Montana; the success of Cat Creek demonstrated to the satisfaction of many operators that where structural conditions were favorable, Montana offered the same opportunities for reward as Wyoming, so an intensive drilling campaign was inaugurated. Soap Creek in Big Horn County was the next field to produce crude oil in commercial quantities, and it was predicted that before the close of 1921, this state would rank as one of the great oil producing states. Then came the business depression, stories of overproduction, followed by a rapid decline in the price offered for crude. Within a few weeks the posted price of Cat Creek oil dropped from \$3.10 to \$1.00 per barrel. Many of the companies found it impossible to finance their operations, and development of the new fields was retarded. At the present time there are four fields producing, Elk Basin, Cat Creek, Devil's Basin and Soap Creek.

As the three new fields were located some distance from a railroad, the question of marketing the oil soon became a serious problem. The first pipe line for the transportation of oil in Montana was laid from the Cat Creek field to Winnett, a distance of twenty miles, by the Frantz Corporation in August, 1920. The new wells drilled in the field proved that this was a real field, so the Elk Basin Consolidated Petroleum Company and Midwest Refining Company jointly built a four inch line from the field to the railroad. This was followed by the Montana Independent Pipe Line Company's six inch line, giving a total daily capacity from the field to the railroad of approximately 23,000 barrels.

The two and four inch lines were built, primarily, to carry the production of the owners; other companies had brought in wells, in the meantime and found themselves

isolated from a market. They were apparently obliged to sell to the owners of the pipe lines at such price as might be offered, or to store the oil in field tanks. The situation was brought to the attention of the Seventeenth Legislative Assembly, and resulted in the passage of the so called "Pipe Line Common Carrier" bill during the Extra-ordinary session in April, 1921. The measure defines and is designed to regulate Common Carrier Pipe Lines, and vests the Railroad Commission with authority to regulate the rates, charges and business of pipe line companies and to prohibit discrimination.

The Elk Basin and Midwest companies immediately filed an acceptance of the provisions of the Act and agreed that the four inch line be designated a common carrier subject to the conditions named in the Act. Operation of the two inch line had been suspended in the meantime, the pipe disconnected and sections used for other purposes. The line of the Independent Pipe Line Company had been laid for the use of all shippers, and as this company had no interest in either production or refineries so it was primarily a common carrier. The development in the Devil's Basin has been slow, and there are no transportation facilities except by truck from the field. Soap Creek now has four commercial wells and large storage tanks in the field, **but construction has not been commenced** on a pipe line.

An eight inch line has been laid for the transportation of natural gas from the Elk Basin in Wyoming to Billings, but as the Common Carrier Pipe Line Act is designed solely to regulate pipe line transportation of petroleum, the Railroad Commission has no jurisdiction over such natural gas line. The Public Service Commission will assume jurisdiction over this utility.

We are now therefore, concerned with two lines only, both originating in the Cat Creek field and terminating at the end of the Milwaukee branch line at Winnett. The commission has proceeded with the utmost caution in asserting restrictive authority over both lines. The future prospect of production in this state is somewhat of an uncertainty and it is our policy to avoid rules or regulations of any sort that might tend to retard this promising infant industry. Both carriers were first requested to file rate schedules; the Elk Basin Company filed a tariff providing for a rate of 15c per barrel and the Montana Independent a tariff containing a rate of 32 1-2c per barrel. A public hearing was held after these filings and on the theory that the same rate should apply for the same service and that both carriers were entitled to live, the higher rate was prescribed for both pipe lines. Later, upon motion of the Elk Basin-Midwest companies, a rehearing was held

and the findings of the first hearing affirmed. A request for a third hearing has recently been granted, it being claimed that to this day the Montana Independent Pipe Line has not transported a barrel of crude oil, and that a rate based on the investment and estimated operating expenses of an inoperative carrier is unjust to the shippers who have used the Elk Basin-Midwest line, which has been in continuous operation for over a year, at rates higher than the latter line requests. The hearing was held in Lewistown on December 1st, 1921.

Following the approval of the tariffs, a number of questions were submitted to the Commission for decision, involving details of transportation and relation of shipper and carrier. The commission, on October 1st, 1921, after consideration of the facts developed at two public hearings, and all representations made orally and by correspondence promulgated rules and regulations fixing the rights and privileges of shippers and pipe line companies. A copy thereof is included in this report.

STATISTICS REGARDING PETROLEUM PIPE LINES OPERATING IN MONTANA.

Two inch line—Built by Frantz Corporation 1920. Length—Twenty miles, Cat Creek Field to Winnett. Power, steam, generated by burning crude oil under boilers.

Pumping Plants—One in field and one midway between field and Winnett. Cost—As of December 31st, 1920, \$47,468.21. This line not in service.

Four inch line—Built jointly by Elk Basin Consolidated Petroleum Company and Midwest Refining Company in 1920. Length—Twenty Miles, Cat Creek field to Winnett. Power, Main Pumping Station: steam generated by burning crude oil under two 100 HP. tubular boilers; two steam driven pumps. Auxilliary Pumping Station: two 25 HP. oil engines belt connected to two 3in. x 10 in. pumps.

Field Storage: 55,000 barrel steel tank. Terminal Storage: 1-15,000 barrel steel tank: 4-1000 barrel steel tanks (35,000 barrel storage capacity recently added.)

Capacity: 5,300 barrels per 24 hours under 650 lb. working pressure. Cost: As of March 31st, 1921 (including telephone line) \$249,496.58. Oil Transported:

January, 1921	67,519.50 bbls.
February	106,294.16 bbls.
March	87,299.73 bbls.
April	90,286.31 bbls.
May	No report
June	108,481.70 bbls.
July	112,710.11 bbls.
August	111,580.70 bbls.
September	131,328.96 bbls.
October	147,670.76 bbls.

Six Inch Line—Built by Montana Independent Pipe Line Company in 1921. Length: 17 1-2 miles Cat Creek Field to Winnett. Power: 2 100 HP. Fairbanks-Morse Style V. Diesel engines, direct connected to two 4 in. x 12 in. Fairbanks Morse Pumps.

Field Storage: 1-55,000 barrel steel tank.

Terminal Storage: 1-55,000 barrel steel tank.

Capacity: 12,806 barrels per 24 hours under 400 lb. working pressure.

Cost: Land	\$ 10,000.00
Pumping Machinery	20,200.00
Pipe Line	109,780.00
Tanks	60,000.00
Water Line	3,000.00
Loading Racks	5,500.00
Autos	4,000.00
Bldgs. Labor, frt. & Mscl.	108,000.00
Total Tangible Values	\$320,480.00
Engineering and Organization—25%.....	\$ 80,120.00
Total	\$400,600.00

Oil Transported: None

Oil Received:

Prior to August 1st, 1921	7,177 barrels
August	5,851 barrels
September	6,198 barrels
October	6,600 barrels

BOOK II PART VI

PUBLIC SERVICE COMMISSION

Informal Orders, Opinions, Conference
Rulings, Rate Tables, Statistics, Administration

PUBLIC SERVICE COMMISSION

It is only a few years ago that the regulation of public service corporations by the state was first seriously proposed. The conditions that gave rise to the demand for such regulation are not so far removed as to be forgotten, and the arguments, for and against, are so recent in this state that they are remembered by all. Beginning with the states of New York and Wisconsin in 1907, one state after another has fallen in line until at the present time forty-two states have adopted to a greater or less extent, the principle of commission regulation. Some of the states have committed themselves somewhat cautiously to this policy, while others have boldly patterned their laws after those states which have very intimate and complete state regulation.

The laws of Montana are far reaching and clothe the Commission with fundamental powers of great strength. Realizing our responsibility we appreciate that to properly perform the functions expected, the public must be assured of fair and reasonable treatment in all matters pertaining to service, safety and rates, and that we are also obliged to reasonably reward those supplying the energy, enterprise and capital without which the highest development is impossible.

But a few years back, public utility service was regarded entirely as a luxury; due to the radical changes in the manner of living, and the rapid expansion and development of the companies, within a decade the service has been extended to even the smallest communities. So rapid have been the extensions and so essential has become the service, once used, that the public thus benefited has adapted its affairs to the improved facilities and accepted them as a matter of course, seemingly forgetting that there ever was a time when such agencies did not exist or were available only in large centers, until today there is hardly an individual in the state who is not in contact with one or more public utilities.

One of the large benefits, incidental though it may be, resulting from regulation in Montana, is the publicity given to both sides of every controversy arising between the public and the utility. Appraisals of property, comparisons of utility with utility, expert investigations of every branch of a company's activities, all matters in evidence attain publicity entirely commensurate with the public interest. The light streams in on affairs once jealously regarded as none of the public's business. Like so many other things, when viewed from a different perspective, public utility opera-

tions lose much of their fascinating mystery and appear quite ordinary affairs of business. Both consumer and utility know that there is a tribunal where complaints may be brought, and this makes for improved behaviour on the part of the utility and deprives the consumer of falsely proclaiming many a fancied, but groundless, grievance or complaint.

When the commission was first established, March 4, 1913, there were all sorts of variations in different parts of the state, not only in the standards of service, but even in the units on which the consumers' purchases were based. Due to the heavy expense incidental to requiring all plants to offer a uniform standard immediately, the commission adopted the policy of a gradual change toward an ultimate goal.

Water supply, because of its direct relation to public health, was given first consideration, and Rules and Regulations were adopted governing the service. Many of the utilities had installed meters designed to measure water with the cubic foot as the unit of measure, and others the gallon, because of the heavy expense that would be imposed should a single unit be adopted, the commission continues to recognize both standards, however, advising the cubic foot unit in all new installations.

Uniform Rules and Regulations governing gas service, applying to both manufactured and natural gas were promulgated on January 3rd, 1921. The rules define the unit and method of measurement, fix the pressure limit and heating value and cover in detail all relations between the utility and consumer. All gas companies coming within the requirements have installed the testing instruments specified, tests are made at regular intervals and the results posted for the information of consumers.

Standards for heating service were adopted by the Commission on May 13th, 1921, the unit of measurement being fixed on the "square foot of radiation per season" basis for hot water heating, and 1,000 pounds of condensation as measured by an approved type of condensation meter, for steam service. The rules specify the manner in which bills shall be rendered and collections made, responsibility for damage, method of charging for extensions and service, an attempt being made to anticipate the principal causes of dispute between consumer and utility.

There was from the start, more variation in the standards of electric service than in the standards of all other public service companies operating in the State. Consequently the development of uniform rules under which all plants could operate, took years to work out. After an experience period of nearly eight years, the commission in

1921 evolved a set of Rules and Regulations fixing standards for electric service that are believed to be entirely workable. The rules were submitted to the utilities, and to mayors of the cities and towns affected, with instructions that suggestions, comments and criticisms be submitted before the 5th of November, 1921, the object being to enlist the cooperation of the public utility managers and consumers to the end that the rules and their interpretation may be made familiar to all interested. For the past several years, the commission during its investigations has encouraged all utilities to adopt a uniform voltage, purchase meters owned by consumers, eliminate direct current service and has otherwise paved the way for uniform standards. There are still a few plants where in order to avoid working an undue hardship, temporary exceptions may have to be made; in others, due to sharp differences of opinion on such questions as to whether consumer or utility shall pay for service extensions, the Commission will be obliged to make arbitrary decisions. The new uniform rules were approved November 19, 1921, and became effective December 1, 1921.

Review of the Year, 1921.

There has been little if any change in conditions affecting utilities during the past year. Though Montana had a normal crop, conditions in the larger cities are far below normal. The mines and smelters remained closed and this condition coupled with the low prices of hay, grain and cattle, have produced a depressing effect in every section of the state. There has been little if any reduction in coal or freight rates, the reduction in labor has been more than offset by loss of consumers. Except in a few isolated cases, there is little probability of rate reductions until there is a radical change in industrial conditions, and a downward revision of freight rates.

The street railway question continues to be most serious, in this as well as in other states. Fare increases, apparently are offset by loss of revenue passengers. We now have two systems operating under the 10c cash and 6 1-4c ticket combination, but the trial period has not been sufficient to determine whether the necessary relief will result. The Great Falls system continues to operate on a 5c fare, and due to ideal operating conditions, is showing a profit.

There has been little change in the price of Sunnyside lump coal, used for manufacturing gas in this state. The gas companies have apparently held their own during the past year, and a few have continued to gain consumers in the face of adverse business conditions.

Oil drilling in Montana has brought about the discovery of natural gas in various sections, and it may be safe to predict that within a year a number of communities other than those now served, will be using the fuel for lighting and cooking. New wells have been brought in at Havre, which promise a large production for years to come; the act of the Seventeenth Legislative Assembly in prohibiting the manufacture of carbon black in Montana (Chapter 125, Laws 1921) insures gas for Glendive and Baker for a generation, if its constitutionality is not impeached. The most important news of the year was the announcement by one of the larger companies that natural gas would be piped from the Elk Basin field in Wyoming to Billings, the distance being 72 miles. An agreement has been reached whereby the mains of the Billings Gas Company will be used for distributing gas to the various parts of the city. Natural gas has been discovered within striking distance of Great Falls; there is some doubt as to the volume available, but the showing indicates that the citizens of Great Falls have every reason to expect natural gas service within five years.

There has been very little change in the conditions of the electric utilities since 1920; one or two operating in small communities have been forced to suspend, temporarily, but others have started so that the total is greater this year than ever before.

The telephone companies have been the most seriously handicapped of all the utilities due to their inability to procure needed supplies and materials at any price. As there has been a drop in the cost of labor and all materials are again on the market, we look for considerable deferred maintenance work and rebuilding in 1922.

Public telephone service, particularly toll service, in this state is rendered by one principal utility. The Commission believes that the value of this utility's property used in the public service, its rates charged and its regulation should be considered on a state-wide basis. The distribution of the burden of payment of the necessary revenue should then be made on the basis of the class of service furnished, number of subscribers and population of each community affected. In rate adjustments therefore, we are working toward that end; we have attempted no artificial segregation based on municipal boundaries, but as revisions become necessary, the adjustments are made with reference to the community's relation to the system as a whole. This policy is essential to the character of telephone service which the public now demands, and to our minds, represents the only course that will permit its development to the highest possible degree.

Physical Valuations.

Knowing that the most essential factor in rate making consists in first fixing a rate base, we have caused our engineer to make a physical valuation of each property before us for a rate adjustment. We have followed the usual custom of collecting a complete inventory in the field of the material going to make up a given plant and equipment, and applying unit prices. Our view has been, excluding abnormal or unusual cases, that the method fairest to the public and to the utility, is to compute the cost of reproduction under the actual physical, commercial and economic conditions that existed when the plant was originally built. Recently, the high war prices have operated to greatly inflate a cost-of-reproduction estimate over the actual cost of construction. We now make an effort to establish as nearly as may be the actual cost of the utility property under investigation for consideration along with reproduction cost. This amounts, in practice, to dividing the inventory of plant and equipment into two parts, namely that constructed prior to 1917, and that constructed subsequent to 1917, applying to each the average unit prices prevailing in its respective period. By this method we are able to obtain valuations which are consistent with the methods of determining rate bases of utilities which were valued in the earlier days of the Commission. This policy not only insures to the utility that no items will be assigned a value less than actual cost, but serves to make permanent all valuations. Additions to plant are carried forward from year to year in our records, so that a rate base may be readily determined when required.

The valuation as made by the engineer is not the only element however, that is considered by the commission in fixing a rate base; rates fixed on valuation alone, together with the cost of operation, would amount to a "cost-plus" system of rate making. It is our custom to measure the value of the service, and the efficiency of the plant and its operation, based on the theory that a suitable reward should be accorded by a regulatory body for a high degree of efficiency and economy, coupled with good service to the public. Thus it sometimes appears that our rate base may be less than the apparent physical valuation, because of depreciation, the difference being found between "reproduction cost" and "service value;" or it may be greater, because of the intangible values we might find proper to add to the appraised value.

Physical Valuation of Montana utilities are being made continuously, it being our intention ultimately to cover the entire field within our jurisdiction. It is realized that physical valuations of the larger state-wide properties are

impossible at this time, because of the expense involved, but with all the smaller properties completed in five or even ten years from now, the commission will have finished the greater part of the task.

It goes without saying, that our physical valuations, though made primarily for rate making purposes, are available for the various County Assessors, City Councils and others having occasion to determine the investment or value of public utility properties. As the work proceeds, we anticipate that the information will be of some value to the State Board of Equalization in assessment matters.

Rate Comparisons.

As the work of the commission permits, it has been our policy to prepare tabulations and charts for comparison of the rates charged for the same service in the different cities and towns. Due to so many of the plants being isolated, and the conditions and operating conditions different, the rates of necessity must vary in the various communities. Many of the rate schedules under which plants are now operating were in effect before the creation of the commission; where our studies of the charts show discriminations as between towns or between consumers in the same towns, the proper changes and adjustments of rates are being made as soon as discovered.

The Commission is now engaged in a study of the fundamental method of fixing electric rates; it is recognized that basing the charge on the number of kilowatt hours consumed is but one way of computing the amount a user should pay for service, and was adopted, not because it was perfect, but because at the time adopted, service was divided into but two general classes, lighting and power; the number of kilowatt hours used per month offered a fair solution of apportioning the utilities' operating expenses and fixed charges among consumers, each paying in proportion to current used. A power installation is designed to carry the heaviest load that a plant may be called upon to carry. The peak of a lighting load comes during the fourth week in December and the daily peak between 8 and 10 each evening. The investment in plant is fixed by a load that is carried for, say two hours a day, there being about eighteen hours when the plant is running practically idle. It is apparent, therefore, that a water power plant can easily carry a load through the day at practically no additional expense, which accounts for reduced rates offered by many companies for cooking and other electric appliances used during daylight hours.



Foldout
Here



Measured in terms of work, the kilowatt hour is one of the cheapest commodities on the market today. When a consumer pays 10 cents per kilowatt hour, he is renting the use of 1000 watts (or 1 1-3 horse power) for one hour. You would hardly expect to hire a man to carry 4300 five gallons cans full of water up a ladder 16 1-2 feet high every hour for 10 cents an hour, but if you care to use electrical energy for that purpose, that is exactly what it will do. If you use your kilowatt hours for lighting, you are using current in one of the most inefficient manners possible, because a very large percentage is consumed in heating the lamp filament, and a very small percentage given off as light. Wonderful improvements have been made in the development of the tungsten, mazda and nitrogen lamps during the past few years, that are far more efficient than the carbon filament lamp of a decade ago, but there is still opportunity for further improvements, and a rich reward awaits the successful inventor. A kilowatt hour contains 3412 British Thermal "units," a "unit" being the amount of heat necessary to raise the temperature of one pound of water, one degree Fahrenheit. Due to the high efficiency of heating appliances a consumer gets more value from heating and cooking service than any other. It is often stated that when heating devices are improved, electricity will be used as a substitute for coal for general heating. This is not the case, because heating appliances have already reached the highest development possible and are practically 100 per cent efficient; when a device is 100 per cent efficient, it is perfect and there can be no further improvement. A pound of bituminous coal costs 1-2 cent, and contains 11,000 heat units; the fixed charges of generating a kilowatt hour of electricity (3412 heat units) by water power can never be less than one cent, so it can be seen that there will be no competition on the same basis of cost unless coal advances to \$30 or \$40 per ton. Electricity will be used more and more for auxilliary heating on a small scale, by those willing to pay the additional cost for the cleanliness and convenience incidental to electric heating. Electricity can successfully compete with coal for transportation, first because of the high cost of moving coal to the point of use; second, because of the low efficiency of the steam locomotive; third, because of the increased tonnage that may be hauled by a single locomotive the labor cost is materially reduced. Our studies and comparisons indicate that the immediate future will see some substantial reductions in the kilowatt hour rate which will permit a still more extensive use of labor saving appliances in the homes. The records show that the average annual receipts per consumer of one large utility operating in this state were \$21.00; this utility

has sufficient installation so that if each consumer would use double the quantity of current used in 1920, there would be practically no additional cost in generating electricity. Thus, it appears that the rates could be cut in half if each consumer would agree to double his use of electricity. Any such radical change in rate making would require that the utility be properly safeguarded in these particulars, first, that the additional current would not be used during the hours of peak load, and second, that each consumer would double the current consumed. The latter could be effected by a fixed minimum which each consumer would be required to pay, regardless of his consumption, plus a cheap rate for each kilowatt hour used.

The cost of electric service may be illustrated by the investment of one company operating in the state:

Investment per consumer in distribution system, including meter	\$104.00*
Revenue received per lighting consumer, 1920	21.00
Cost: taxes, interest and depreciation 12% of \$104, say	12.00
Cost of billing and collecting per consumer.....	6.15
Total	\$ 18.15
Payment for current used	\$ 3.85
(*Computed by dividing the utilities investment in distribution system by the number of consumers.)	

Therefore, from \$3.85 paid by each consumer in this instance, there had to be subtracted the cost of generating the current, including wages of power plant operators, fixed charges and taxes on the hydro-electric plant, and any profit in the business. This example is given to show that a consumer pays for "service" rather than "kilowatt-hours." The chief items of cost of service from a water power plant consist of fixed charges on the heavy investment; even reading the meters, billing and collecting costs twice as much as the creation of the current purchased.

Montana's Electrical Development.

Electricity has been styled the foundation stone upon which the civilization of the future is to be built. Because of the abundance of water power in Montana susceptible of economic development and new discoveries in the science of long distance transmission, a dependable, uninterrupted supply of cheaper electric power for homes, factories and industries in every section of the state, is assured.

A true account of the possibilities of the development of hydro-electric power is surprising to one not familiar with the actual facts. Montana has already stepped to the front as a pioneer in electrical development; here was built one of the first long distance, high tension transmission lines in the world carrying 50,000 volts. The Butte,

Anaconda and Pacific Railway, with 90 miles of electrified track, and carrying in addition to passenger business, heavy ore trains between the Butte Mines and the Washoe smelter at Anaconda, was the first successful attempt to utilize high voltage direct current to replace steam locomotives for general railway traffic. The results of this experiment were watched with interest by transportation experts all over the world, and when its success was demonstrated, the Chicago, Milwaukee & St. Paul Railway let contracts for the electrification of its lines across the main ranges of the Rocky and Bitter Root Mountains in Montana. This represented the first use of electrical energy for the handling of heavily loaded transcontinental freight trains.

While the record of these engineering achievements is a matter of history, the fact that Montana was one of the first to develop the idea of better street lighting to the point where we now lead the world, is not so generally known. The average per capita expenditures for street lighting in the United States is 71 cents. The average for the Western States is 80 cents while Montana leads all of the states of the union with a per capita expenditure of \$1.19. This state ranks with the highest as a user of electricity for general purposes; we pay more for our energy than other states, not because the rates are higher, but because our citizens use more current. With the rapid development of appliances, Montana housewives were among the first to install labor saving devices designed to take the drudgery from household work, until now there is hardly a utility in the state which does not depend on the revenue from the heating, cooking and general appliance load for an ever increasing proportion of its income.

A census has recently been taken in other western states to determine the percentage of electrified homes in areas supplied with electricity; the average was found to be about 75 per cent. Of the 22,000,000 homes in the United States, but 7,000,000 or 31.8 per cent are wired for electricity. No census has been taken in Montana but it is interesting to note that many of our cities and towns report a ratio of one consumer to every three persons listed in the 1920 census. Taking 108 cities and towns of which we have complete records, both as to population and consumers, the total population is 240,166 and the number of consumers 74,517; this is a ratio of 3.4 to 1, and would indicate that many of our cities have a record of 98 to 99 per cent of homes electrified. The consumers in even the smallest towns now demand 24 hour service, and in many, the lighting is considered but incidental to the general service. A home is no longer modern unless liberally equipped with "convenience outlets" for the attachment of appliances.

A study of our resources show that the four principal water sheds are capable of development of nearly 1,000,000 horse power of which 290,000 is utilized at the present time. The sites are located almost entirely in the Western third of the state. There is no site considered feasible on the Missouri River below Fort Benton, and no site capable of development of 10,000 HP. on the Yellowstone unless the lake in Yellowstone Park is available for storage. The only large power site in eastern Montana is in the Big Horn Canyon, thirty miles from Hardin. The capacity is estimated at from 46,000 to 100,000 HP. depending on the height of dam installed. Because of its strategic location, this site is destined to play an important part in the electrification of the Chicago, Milwaukee and St. Paul east of Harlowton and the Northern Pacific east of Livingston. Other projects in eastern Montana considered feasible are the high head project on West Rosebud Creek below Mystic Lake, and the Buffalo Rapids of the Yellowstone near Miles City. Because of the heavy cost of construction, the latter is hardly feasible until the flow of the Yellowstone is regulated by storage either on the Big Horn or at Yellowstone Lake.

Western Montana, however, offers almost unlimited possibilities; the Clark's Fork and Flathead Rivers alone, with Flathead Lake used for storage, are capable of developing 578,500 horse power using the maximum possible storage of Flathead Lake; this, with the 42,500 already developed, would total 661,000 horse power.

As mentioned in a preceding paragraph, the world's record for long distance transmission was reached at one time in Montana when it was found possible to transmit electricity at 50,000 volts; but thirty years ago the world marveled when electricity was carried 22 1-2 miles at 10,000 volts. New methods of insulation were then devised, and steel towers built, until the safe allowable voltage was increased to 110,000 volts and the distances over which the energy might be sent correspondingly extended. This state now has twenty-five hundred miles of high tension line making it possible for Billings and Lewistown to enjoy service at the same rates as Great Falls and Helena, where the power is generated. Then came 150,000 volt transmission, and the areas served correspondingly increased, but this voltage was fixed by scientists as the absolute limit within the range of possibility, and communities at some distance from water power sites were sentenced to the more expensive and irregular service of isolated steam plants for all time. But the ultimate had not been reached, for even this year a California company has built a 240 mile--165,000 volt line

into San Francisco. This record is to be out done next year in the installation of a 220,000 volt line from the Pit River country in Northern California to San Francisco. Western engineers are carrying the subject to even greater heights and we hear of an experimental line now in operation by the Southern California Edison Company at 235,000 volts over a distance of seven miles. There is no limit to the voltage which electricity may develop; the limit for transmission is the highest voltage at which electricity may be made to follow the conducts of least resistance as laid out for it by man. Even lately we have read of experiments in an eastern laboratory where current was playfully handled by electrical engineers, at 1,000,000 volts.

These experiments, while carried on in other states, are most important to Montana's future; we have the water power in the West and rapidly developing markets in the East. Our problem is to transport the energy at a profit from the canyons of the West to the plains of Eastern Montana. Economic transmission at 220,000 volts spells the doom of the isolated steam plant; the next decade may see the houses of Glendive, Miles City and Wolf Point lighted by power developed at Flathead Lake, and the three trans-continental railways electrified from Dakota to the Idaho line, with a net work of transmission lines between, from which electricity will be used for pumping water for cities and towns, irrigating the arid land and operating factories not thought of today.

High voltage transmission has been made possible by perfecting methods of insulation, and the regulation of voltage by synchronous condensers placed at intervals of 100 miles, until it is now possible to transmit electrical energy 1,000 miles or more with all parts of the line at practically the same voltage for all loads. The smaller wire necessary for high voltages is a very important economy, for though it may seem paradoxical to the layman, the higher the voltage, the smaller the size of the conductor required. The fact is that when the voltage carried over a line is doubled, the carrying capacity is increased four times. In concrete terms, the cost of building a transmission line to carry electrical energy at 110,000 volts is \$1,500 per mile and it will carry 80,000 horsepower of energy, and it costs \$3000 per mile to build a transmission line to carry electrical energy at 220,000 volts which will deliver 320,000 horse power, it is obvious that the latter is the more economical.

High voltage transmission being an accomplished fact it is apparent that at some day, in the not too distant future, Glendive, Forsyth and Wolf Point may be enjoying electric service at 10 cents per KW Hr. or less, instead of the 18, 20 and 22 cent rates paid the local steam plants today.

That day will come when the Northern Pacific, Chicago, Milwaukee and St. Paul, and Great Northern are ready to electrify their eastern divisions, the only visible market sufficient to justify the investment. The maximum requirement of the electrified divisions of the Chicago, Milwaukee and St. Paul Railway is 32,000 HP. The requirement therefore is an average of 72.7 HP. per mile. Though the average grades encountered on these divisions may not be a fair comparison, a rough estimate of the requirements of all the roads of the state would be 225,000 HP. computed at 50 per cent load factor. The total length of the main lines of the Northern Pacific and Great Northern Railroads in Montana, including the Havre-Butte line, and including that portion of the Chicago, Milwaukee and St. Paul which is not electrified, is approximately 2000 miles. At 72.7 HP. per mile, an installation of 145,400 HP. would be required.

A tabulation of the developed and undeveloped water power in the four principal water sheds of the state follows; no attempt is made to estimate the possibilities of the smaller streams, each of which offers an opportunity for water power development on a large or small scale, so that 1,000,000 Horse Power may be taken as a conservative estimate of Montana water power resources.

Developed and Undeveloped Sites.

WATERSHEDS	Head	Flow S. F.	Undeveloped Horse Power	Developed Horse Power
Missouri and Madison Watershed.				
Big Hole River	65	120		4,000
Madison River No. 1				2,500
Madison River No. 2	108	1,000		13,400
Madison River, Upper Site	170	1,000	14,000	
Madison River, Below No. 2	108	1,000	12,000	
Madison River, Lower Site	215	2,250	30,000	
Missouri River, Canyon Ferry	40	2,200		10,000
Missouri River, Hauser	65	2,400		21,000
Missouri River, Holter	103	2,400		54,000
Missouri River, Cascade	60	2,400	17,000	
Missouri River, Black Eagle	43	2,800	13,000	4,000
Missouri River, Rainbow	112	4,400		47,000
Missouri River, Midway	60	4,400	21,000	
Missouri River, Volta	150	4,400		80,000
Missouri River, Sheep Creek		4,400	38,200	
Cut Bank Creek, Cut Bank	10			75
Dillon No. 1	24	55		200
Dillon No. 2	196	8		270
Kendall				450
Spring Creek, Lewistown No. 1	62			450
Spring Creek, Lewistown No. 2				130
Neihart				62
White Sulphur Springs				75
Yellowstone Watershed.				
Yellowstone River, Yankee Jim Canyon	60	1,000	5,000	
Yellowstone River, Livingston	24			2,000
Yellowstone River, Billings	17		1,450	1,500
Yellowstone River, Buffalo Rapids	21		10,000	
Big Horn River, Canyon Project	480		100,000	
West Rosebud Creek, Mystic Lake	1,094	97	8,500	
Virginia City				700
Gardiner				100
Bear Creek				120
Pony				40
Clark's Fork Watershed.				
North Fork Flathead River	145		30,000	
Flathead River, Coram	90		12,000	
Swan River			5,500	2,800
Flathead River, Polson	240		113,000	
Flathead River, Moiese 4 sites—total	175		82,000	
Clark's Fork, Bonner	27			3,200
Clark's Fork, Fish Creek			18,000	
Clark's Fork, Thompson	56	15,000	20,000	40,000
Clark's Fork, Donlan	40		20,000	
Clark's Fork, Rock Island Gorge	50		25,000	
Clark's Fork, Cabinet Gorge	77		38,000	
Flat Creek, Superior				60
Packer Creek, Saltsee	190			50
Maxville, Granite County Power Co.	63			1,000
Hell Roaring Creek, Polson	600	10		700
Flint Creek, A. C. M. Co.	580			670
Kootenai Watershed.				
Kootenai River, Falls			20,000	
Kootenai River, Leonia			11,000	
Troy				300
Libby	310			390
TOTALS			664,650	294,292

One million horse power at a value of \$25.00 per horse power year, would increase the states wealth \$25,000,000 annually. The investments in power plants may be roughly estimated at \$200 per horse power, or a total of one hundred and fifty million dollars for the three-quarter of a million horse power remaining undeveloped today. Because of the war and the industrial depression since, including the cutting off of two large power users, the mines and smelters, Montana is five years behind in its development program. Surveys have been going on continuously and plans have been prepared, so that resumption of work may be expected early in 1922. Mystic Lake and Kootenai Falls are two sites scheduled for early development.

The creation of a Federal Power Commission, accompanied by the necessary legislation, has opened up sites that have been closed before. One obstacle now blocking an intensive development program is the high cost of money. A marked change of conditions may be observed from day to day however; now that the day of "war babies" and dividends of 15 to 25 per cent are past, the public utility securities paying 6, 7 and 8 per cent are again in favor. A marked change in methods is to be expected in the public utility financing of the future. Private ownership, and "public-be-damned" policies have been supplemented by private ownership and public regulation. Municipal ownership has been and will be a success in limited areas, but the large developments, with intercounty transmission lines must be handled on other bases. We are now on the eve of a new era of **public ownership**; the public utility ventures of the future will be financed to a large extent with local money. Many of the largest hydro-electric companies of the west are conducting intensive campaigns for financing among their consumers; securities are, figuratively speaking, placed on the counter with electric irons, and each consumer urged become a junior partner in the company from which he receives service. A few companies are already able to announce from 12,000 to 18,000 consumers that are also stockholders. Such a far sighted business policy is favored by this Commission and recommended to our local companies as it cannot but result in a better understanding between company and consumer and create the spirit of good will essential to the prosperity and growth of every community.

CONFERENCE RULINGS.

Renewal of Water Service Pipes.

The City of Bozeman, Montana, owns its water system, and in contemplation of paving certain streets, embraced in regularly organized improvement districts, it seeks from this Commission an order, or an amendment to its rules and regulations, giving to the city the right to condemn and replace water service pipes now in the ground, the life of which can reasonably well be determined from the records, and thus avoid the expense of tearing up sections of the pavement soon after it has been laid. The city's proposition is to renew these pipes now, and charge the cost to the property owner; payments to be made in installments, and collected the same as water rental.

"General Rules and Regulations" promulgated by the Commission provide:

Rule G. 4, "Waste of water is prohibited and consumers must keep their fixtures and service pipes in good order and at their own expense***."

Under this rule the question of who pays for the repairs, or renewal if the latter is found to be necessary, is disposed of. The manner in which payments shall be made, or within what period of time, must, essentially, be determined by the city itself; it is a matter of detail, incidental to the foregoing general rule.

As to condemnation of service pipes and the replacement of same before pavement is laid, this is **part of the improvement** for which the property owner is paying an equal proportion, and should it be necessary to take up the paving in order to make repairs or replacement of service pipes later on, the entire expense would fall upon the owner thereof. Manifestly it is to the advantage and welfare of the property owner to have this important feature of street paving attended to while it can be done at a minimum cost; and the Commission holds that the same authority which gives the city the right to create improvement districts gives it the right to renew water pipes in the manner herein set forth, and the rule quoted is not in conflict with the right.

Telephone Service-Rooming Houses.

The Commission is asked to make a ruling as to whether or not the landlady of a rooming house comprising thirty-two rooms is entitled to "residence" rates for a telephone installed in her private apartments, under her own name, there being no other telephone for general use in the house.

The utility's General Rules on file with the Commission provide in part as follows:

"Business Rates will apply": "In boarding houses, *** halls and offices of apartment buildings***."

"NOTE: For the purpose of this section a boarding house is defined as a house or apartment consisting of ten or more rooms, where rooms are rented or boarders are taken. If, however, the house or apartment is not conducted primarily for business purposes, and a business listing is not provided, it is generally not classed as a boarding house."

"Business rates also apply, regardless of location, to any station where the subscribers primary use of the service is for business purposes."

"NOTE: Where a subscriber occupies business and residence premises, both of which are located under the same roof, or are connected with each other by doors or passageways, the primary use, where the service is subscribed for at only one location within such premises, is considered to be for business purposes."

The fact of the instrument being placed in the applicant's private apartment does not materially alter the situation. Undoubtedly this applicant is sincere in the assertion that the phone is for **private use**, and will not be at the disposal of others. However, these premises are unquestionably being occupied primarily for **business** purposes, and communication had through open doors with the proposed location of the telephone set. Manifestly it would be impracticable to establish a flexible rule, which undoubtedly would be taken advantage of by some in order to defeat the purpose of a distinction necessary between business and residence service. Indeed, if an exception were made it must extend to other classes of business or industry and would be far reaching in effect; even to the extent that a grocery store telephone located in the proprietor's living rooms in the rear, could claim the residence rate upon the mere statement of the patron that no business would be transacted; whereas if the instrument were moved a **few feet forward** it would take the higher (business) rate.

We are of the opinion and so hold, that telephone service installed in a rooming house, as above, should be classified under the heading of "Business."

Rural Telephone Service.

F. A. Webster, residing south of Stevensville, Montana, and served by the Mountain States Telephone and Telegraph Company's rural Line No. 5, made application to discontinue service on that line and become a subscriber on what is known as farmers' Line No. 41. Complainant reported to the Commission that his request had been denied. It appears that Mr. Webster is the only person being served on the last mile of line No. 5. The telephone company took the position that it had gone to considerable expense in 1920 to rebuild this line in order to serve this single patron; that it would have been financially better off if this mile had been entirely discontinued. Accordingly the telephone company felt that complainant should show his appreciation of what had been done for him and continue as a subscriber.

If a telephone user wishes to discontinue service at any time, there is nothing to prevent him from doing so, regardless of what special consideration he may have been given, as in this case.

Competitive Telegraph Service.

Harlowton, Montana, is an exclusive office of the Continental Telegraph Company. At Bozeman, Montana, both the Continental and the Western Union Telegraph Company have offices. The former being open during day time, while the latter is open for business twenty-fours each day.

A complaint was filed with this Commission stating that a telegram tendered to the Western Union Operator at Bozeman for transmission to Harlowton after the Continental office had closed for the day was refused upon the ground that Harlowton being an exclusive Continental office, the Western Union Company in Bozeman could not accept that business.

Upon investigation it was learned that while the Western Union Telegraph Company's instructions to its employees provided that telegrams destined to an exclusive office would not be accepted, it was not the intention that these instructions should apply, as in this case, after the Continental office had been closed. The message should have been accepted by the Western Union operator and forwarded to the Continental Company at Butte, Montana.

This complaint was the result of an employee of the Western Union Telegraph Company misunderstanding his instructions.

Service Extension-Electric.

Applicant installed an electric range in his house and applied to the utility for service. Electricity for **lighting only** is now and has for some years past, been furnished this property by the same utility which is now requested to supply energy for cooking purposes, and which, it is stated, requires the installation of a larger transformer and stringing of heavier wires for a distance of approximately six hundred feet.

The utility's rules provide in part as follows:

"The company will make all service extensions from their pole to the consumer's building free. The company will not extend its secondary lines more than three hundred feet for one electric light consumer."

By virtue of this rule the utility demanded that the applicant stand the line-construction expense beyond the three-hundred-foot limit, as above; hence this complaint.

Held, that the utility should bear the entire expense; that the additional service requested does not involve a "line extension" within the meaning and intent of standard rules, inasmuch as the applicant resides within the area now being served by the utility and has no other choice of service; that the "secondary lines" had already been strung to reach the premises, and that the use of heavier wires for the greater portion of the six hundred feet could be obviated by changing the location of the transformer to a point closer to the property to be served—which has been done.

Electric Service Extension.

This complainant, a resident of Helena, Montana, reported to the Commission that he had been obliged to pay to the Helena Light and Railway Company the sum of \$94.10 to fully cover the cost of extending the electric lines of the utility 405 feet in order to serve his property. It was agreed by and between the parties, that the amount so paid would be refunded on basis of 25 per cent of the consumer's yearly bill for electric current furnished.

The rules laid down by this Commission provide that the utility shall not be required to extend its secondary lines more than three hundred feet for one consumer, but said extension shall be at the sole cost of the utility. Our investigation showed that the above amount, \$94.10, was paid in full for all labor and material expended in making the extension. The utility was unable to explain just how this happened, but was willing to and did make prompt refund of \$85.55, this being the prorated amount covering the 300 feet which the utility is required to construct at its own expense. In other words, of the total extension of 405 feet, the consumer stood the expense of 105 feet only.

Duty of Utility to Serve.

This complainant alleged that a certain gas utility refused to serve him, giving as its reason, inability to make collection of an old bill contracted about a year before, and which was the subject of dispute between them. Investigation disclosed that complainant had signed a contract with the utility, agreeing to pay fifty dollars for piping a portion of a flat building, and it appears that the money has never been paid; notwithstanding that the utility had obtained a judgment in justice court.

The merits or demerits of the case have no particular bearing with reference to complainant's application now for service at another location. He comes to the utility in the role of a new customer, and has tendered a deposit of the amount required by the rules for the gas company's protection. The latter is thereby protected against loss in this **particular transaction**, which must be considered separate and distinct from any previous merchandise dealings, and therefore treated accordingly. Indeed, if such were not the case there would be no limit to the objection that might be raised by utilities, for personal or other reasons, for not performing public duties.

Held, that if the applicant is ready to make deposit of the required amount in accordance with the rules of the utility, the same to be held as a guarantee for the payment of bills, he is entitled to be served, and the utility's recourse in the matter of past merchandise indebtedness lies through other channels.

STATISTICS
PUBLIC SERVICE COMMISSION

ELECTRIC UTILITIES OPERATING IN MONTANA

Investment in Plant and Equipment, Operating Revenues and Operating Expenses for the Year Ended Dec. 31, 1920

Location	Company	Plant and Equipment	Operating Revenues	Operating Expenses	Gross Income from Operations, or Deficit	Type
Anaconda	Anaconda Copper Mining Co.	191,747.96	130,967.45	85,155.93	45,811.52	Sub-station
Antelope	O. B. Hoven	5,239.50	3,086.80	3,059.73	6.07	Oil
Absarokee	Absarokee Power Co.	30,000.00	1,800.00	2,125.00	325.00*	Oil
Armistead	Elmer Gordon	1,000.00	948.00	960.00	12.00*	Oil
Bridger	Bridger Water & Light Co.	51,572,001.52	9,253.86	11,474.23	2,220.37*	Sub-station
Butte	Montana Power Co., General	16,667.42	3,915,491.25	1,786,757.83	2,128,733.42(1)	Hydro-Electric
Butte Creek	Bear Creek Water & Light Co.	16,667.42	7,822.47	7,822.47	505.47	Sub-station
Baker	Baker Light & Power Co.	27,459.52	14,424.38	13,482.25	942.13	Steam-Coal
Bainville	Bainville Electric Co.	4,397.34	3,932.86	4,290.62	357.76*	Steam-Coal
Chinook	Municipal	19,883.52	26,289.02	24,461.27	1,827.75*(9)	Oil
Culbertson	City Garage & Light Plant	9,092.00	8,951.40	8,272.35	679.05	Hydro-Elec. & Oil
Cut Bank	Cut Bank Electric Light & Power Co.	19,229.92	11,536.95	13,063.24	1,546.29*	Sub-station
Deer Lodge	Deer Lodge Electric Co.	50,586.01	45,807.84	35,130.57	10,687.27	Hydro-Electric
Dillon	Union Electric Co.	283,394.89	48,963.10	25,631.34	23,331.76	Oil
Dodson	Municipal	34,665.00	3,243.17	3,198.62	44.55(9)(10)	Sub-station
Drummond	Drummond Light & Power Co.	3,400.00	6,729.42	6,295.69	433.73	Oil
Dooley	Dooley Electric Light Plant	3,800.00	2,342.85	2,135.00	207.85	Steam
Eureka	P. L. Howe Lumber Mills	46,346.16	15,046.85	13,738.32	1,307.93	Steam-Coal
Forsyth	Forsyth Electric Light & Power Co.	136,619.40	45,088.36	41,867.71	3,220.65	Steam-Coal
Fairview	Jennison Light & Power Co.	63,110.20	34,927.01	31,213.97	3,213.74	Oil
Faxville	Swenson Bros. Electric Co.	4,758.65	2,766.75	2,587.76	61.01*	Oil
Froid	Interstate Electric Co.	8,000.00	5,751.36	6,902.83	1,151.47*(5)	Hydro-Electric
Gardiner	Gardiner Electric Light & Water Co.	11,083.57	2,963.39	3,163.31	206.02*	Steam-Coal
Glendive	Eastern Montana Light & Power Co.	521,504.28	75,138.50	59,121.32	16,016.98(6)	Hydro-Electric
Great Falls	Great Falls Power Co.	21,379,929.84	3,541,298.75	1,718,491.28	1,822,807.47(3)	Steam & Oil
Glasgow	Municipal	12,000.00	5,444.01	5,371.55	72.46	Oil
Geraldine	Geraldine Electric Co.	292,723.06	208,448.20	108,610.03	99,838.17	Sub-station
Helena	Helena Light & Railway Co.	84,507.87	28,522.28	32,241.51	3,719.23*	Steam-Coal
Hardin	Hardin Electric Light & Power Co.	25,754.33	10,147.17	8,042.13	4,055.04	Oil
Harlem	Harlem Citizens Electric Co.	13,838.30	2,825.88	2,728.66	97.22	Oil
Hinsdale	Hinsdale Improvement District	3,200.00	2,291.64	2,424.58	202.94*	Oil
Hinsdale	Municipal	1,650.10	2,395.93	3,180.75	784.82*	Oil
Honolulu	Ismay Light & Telephone Co.	Discontinued	143,121.03	65,250.04	77,870.99(7)(2)	Hydro-Electric
Idamay	Idamay Light & Power Co.	100,000.00	8,454.96	7,241.76	1,213.20	Hydro-Electric
Joplin	Mountain States Power Co.	166,139.37	15,295.05	13,263.56	2,131.49	Hydro-Electric
Kendall	Barnes-King Development Co.	442,175.33	1,438.76	3,911.63	2,472.87*	Hydro-Electric
Libby	Libby Water & Electric Co.	1,580,778.65	134,004.77	137,381.07	2,576.30(9)*	Steam-Coal
Lima	Oregon Short Line Railroad	1,580,778.65	279,720.33	177,155.94	102,564.39(4)	Hydro-Electric
Lima	Municipal	8,210.00	29,782.37	4,495.42	698.22*	Oil
Missoula	Missoula Light & Water Co.	46,956.88	29,782.37	32,562.12	2,779.75*	Oil
Medicine Lake	Interstate Electric Co.					
Malta	Malta Light & Power Co.					

PRIVATELY OWNED WATER UTILITIES OPERATING IN MONTANA.

Investment in Plant and Equipment, Operating Revenues and Operating Expenses for the Year Ended December 31, 1920.

Location	Company.	Plant and Equipment	Operating Revenues	Operating Expenses	Gross Income from Operations, or Deficit.	Type
*Anaconda	Anaconda	Copper Mining Co.	73,847.80	35,583.14	38,264.66	Gravity
Alberton	Abolition	Water Works	1,052.10	971.88	80.22	Gravity
Bearcreek	Bearcreek	Water & Light Co.	6,563.31	4,717.46	1,845.85	Gravity
Belgrade	Belgrade	Water Co.	21,443.47	4,214.39	3,982.11	Gravity
Big Fork	Mountain States	Power Co.	8,196.50	563.65	304.91	Pumping
Bridger	Brdger	Water & Light Co.	563.65	8,825.23	178.72(1)	Pumping
Butte	Butte	Water Co.	8,646.51	400,001.80	190,050.07	Pumping
Columbia Falls	J. A. Talbott	Water Co.	590,051.87	3,928.77	2,904.10	Gravity
Conrad	Conrad	City Water Co.	6,832.87	11,983.39	7,236.68	Pumping
Deer Lodge	Citizens	Water Co.	11,983.39	11,901.71	7,536.40	Gravity
Deer Lodge	South Deer Lodge	Water Co.	19,138.39	3,307.50	(2)	Gravity
DeBorgia	Jos. Mayo	Discontinued	10,557.90			
Gardiner	Gardiner	Electric Light & Water Co.	2,015.40	3,306.56	1,291.16(1)	Pumping
Great Falls	Little Chicago	Water Works	2,312.65	1,408.26	904.39	Pumping
Hamilton	Missoula	Light & Water Co.	16,009.54	10,542.64	5,466.90	Gravity
Libby	Libby	Water & Electric Co.	10,430.83	7,475.64	2,955.19	Gravity
Lima	Oregon Short Line	Railroad	297.75	35.00	262.75	Gravity
Livingston	Monidah	Trust	5,836.11	12,561.07	7,024.96(1)	Pumping
Marysville	Beuschlein	Water Works	600.00	256.00	344.00	Gravity
Missoula	Missoula	Light & Water Co.	112,276.41	69,367.21	42,909.20	Gravity
Nehart	Nehart	Electric & Water Co.	2,700.90	1,653.45	1,047.45	Gravity
Pony	Plains	Light & Water Co.	3,200.95	1,881.36	1,419.59	Gravity
Paradise	Morris State Bank & Mendenhall		116.00	79.37	36.63	Gravity
Paradise	Northwestern Improvement Co.		656.00	525.75	130.25	Pumping
Salt Lake	Superior Electric Light & Water Co.	Included in Electric Report	2,989.92	4,961.00	1,971.08(1)	Gravity
Salt Lake	Superior Electric Light & Water Co.	Included in Electric Report	4,085.30	3,329.59	755.71	Gravity
Thompson Falls	Thompson Falls	Water Co.	35,238.74	1,273.16	373.46(1)	Pumping
Two Dot	Big Elk	Water Co.	899.70	1,748.01	847.74	Gravity
Virginia City	Virginia City	Water Co.	2,595.75	1,350.64	907.29(1)	Pumping
Williams	Williams	Water & Light Plant	443.35			

(1) Deficit.

(2) Discontinued.

(3) Included in Electric Report.

MUNICIPALLY OWNED WATER UTILITIES OPERATING IN MONTANA.

Investment in Plant and Equipment, Operating Revenues and Operating Expenses for the Year Ended April 30, 1921.

Municipality	Plant and Equipment	Operating Revenues	Operating Expenses	Gross Income from Operation or Deficit	Type
* Big Timber	79,113.95	8,639.10	4,810.95	3,828.15	Pumping
* Billings	608,761.36	116,349.02	70,886.60	45,462.42	Pumping
* Bozeman	403,435.90	41,031.50	15,255.12	25,776.38	Pumping
Belt	42,088.81	5,009.15	7,314.60	2,305.45(1)	Pumping
Baker	156,800.00	3,726.30	13,040.00	9,313.70(1)	Pumping
Broadview	32,324.30	2,510.80	2,064.60	446.20	Pumping
Big Sandy	17,650.00	3,549.30	2,732.11	817.19	Pumping
Chinook	48,048.68	9,549.08	12,059.36	2,510.28(1)	Pumping
Chester		1,910.30	1,452.30	458.00	Pumping
Cut Bank	37,060.00	8,905.21	7,421.59	1,483.62	Pumping
* Choteau	44,976.63	4,767.09	4,241.60	525.49	Pumping
Clyde Park	18,000.00	1,143.00	1,400.00	257.00(1)	Gravity
Culbertson		5,143.60	5,974.61	831.01(1)	Pumping
Cascade	39,751.57	2,359.13	570.85	1,788.28	Gravity
Columbus	48,389.01	8,339.65	7,124.61	1,215.04	Pumping
* Dillon	139,992.72	17,144.65	16,947.41	197.24	Gravity
Dodson	34,665.00	1,430.00	1,422.01	7.99(2)	Pumping
* Denton	82,838.06	2,364.41	468.90	1,895.51	Pumping
Eureka	44,572.39	5,712.80	4,653.98	1,058.82	Pumping
Forsyth	61,508.09	11,472.26	10,952.05	220.21	Pumping
* Fort Benton	60,994.66	5,913.75	3,249.85	2,663.90	Pumping
Fromberg	19,099.62	4,303.09	1,895.38	2,408.61	Pumping
Glasgow					Pumping
* Glendive	135,751.95	23,686.81	23,865.78	178.97(1)	Pumping
+ Great Falls	925,655.65	165,109.91	89,468.82	75,641.09	Pumping
Harlem		5,062.50	4,781.46	281.04	Pumping
* Harlowton					Pumping
* Havre	235,417.40	29,630.09	24,910.97	4,719.12	Pumping
* Helena	1,060,449.54	77,902.52	26,566.91	51,335.61	Gravity
Hardin	67,088.85	9,060.65	12,961.05	3,900.40(1)	Pumping
Hinsdale	21,970.22	2,228.43	2,011.99	216.44	Pumping
Hysham					Pumping
Joliet	22,770.46	2,432.28	1,390.75	1,041.53	Gravity
Judith Gap					Pumping
* Kalispell	200,909.13	47,980.14	28,656.09	19,324.05	Pumping
* Lewistown	438,916.08	41,651.90	18,434.40	23,217.50	Pumping
Laurel	36,534.87	10,874.85	10,893.78	18.93(1)	Pumping
* Livingston	274,069.27	41,367.11	37,663.00	3,684.11	Pumping
* Manhattan	33,874.93	4,120.30	2,139.49	1,980.81	Pumping
* Miles City	308,052.12	46,835.32	37,693.48	9,141.84	Pumping
Moore	30,000.00	2,461.40	2,174.50	286.90	Pumping
Malta	62,031.61	5,585.38	7,037.52	1,452.14(1)	Pumping
Medicine Lake	17,974.89	1,363.95	1,138.40	225.55	Pumping
Melstone		2,360.62	3,277.75	917.13(1)	Pumping
* Philipsburg	97,062.79	9,324.80	3,611.43	5,713.37	Gravity
Polson	41,822.38	8,957.10	4,289.39	4,667.71	Pumping
Pentywood	36,674.36	3,761.86	4,246.41	484.55(1)	Pumping
Poplar	76,329.96	4,649.05	4,000.13	648.92	Pumping
* Red Lodge	120,000.00	5,813.30	2,880.09	2,933.21	Gravity
* Roundup	120,000.00	18,059.46	13,755.78	4,303.66	Pumping
Ronan	28,319.54	6,435.33	4,760.06	1,675.27	Pumping
Sheridan	31,669.00	3,028.70	1,780.01	1,248.69	Gravity
Shelby		9,503.01	16,157.85	6,654.84(1)	Pumping
Sidney	23,170.14	3,473.34	3,416.87	56.47	Pumping
Stevensville	40,000.00	2,961.50	1,101.85	1,859.65	Gravity
Saco		1,100.20	2,192.68	1,092.48(1)	Pumping
* Scooby	110,603.15	2,225.11	2,606.00	370.89(1)	Pumping
Townsend	63,000.00	4,776.50	2,336.60	2,439.90	Pumping
Twin Bridges	17,750.00	1,500.00	1,040.00	460.00	Pumping
Troy	31,642.87	5,530.58	4,591.10	939.48	Pumping
* Three Forks	115,635.04	6,449.58	9,053.82	2,604.24(1)	Pumping
* Valier	40,000.00	3,107.37	3,621.61	514.24(1)	Pumping
Wibaux	33,776.81	2,163.30	1,000.41	1,162.89	Pumping
Whitefish	87,822.71	22,737.23	13,777.41	8,959.82	Pumping
White Sul. Spgs	30,000.00	3,561.59	2,919.54	642.05	Gravity
* Whitehall	17,000.00	3,518.73	3,049.48	469.25	Pumping
Wolf Point	28,475.67	6,636.19	3,910.31	2,725.88	Pumping

(1) Deficit

(2) Valuation includes electric utility.

TELEPHONE UTILITIES OPERATING IN MONTANA
Investment in Plant and Equipment, Operating Revenues and Operating Expenses, for the Year
Ended December 31, 1920.

Location	Company	Plant and Equipment	Operating Revenues	Operating Expenses	Gross Income from Operations, or Deficit
Absarokee	Absarokee Telephone Co.	12,005.00	4,900.00	4,300.00	600.00
Armistead	Lemhi Telephone Co.	240,193.06	32,510.23	24,508.96	8,001.27
Antelope	Antelope Telephone Co.	14,583.81	3,835.16	2,743.30	1,091.86
Alder	Ruby Valley Telephone Co.	1,390.00	645.89	607.39	38.50
Baker	Golden Valley Telephone Co.	25,118.64	7,773.02	4,925.61	2,847.41
Ballantine	Home Telephone Co.	5,100.00	3,146.02	3,121.53	24.49
Belfry	Clark Fork Farmers Telephone Co.	1,185.64	4,376.87	4,138.86	238.01
Buffalo	Farmers Mutual Telephone Co.	5,716.50	3,284.23	2,916.36	367.87
Big Timber	Big Timber Home Telephone Co.	8,740.00	8,630.82	7,282.44	1,348.38
Belgrade	Bozeman-Pass Creek Telephone Co.	6,500.00	2,878.40	2,961.60	88.20(1)
Broadview	Farmers Mutual Telephone Co.	1,600.00	240.00	290.00	40.00
Baker	Big Hill Telephone Co.	2,400.00	678.00	250.00	428.00
Big Sandy	Springhill County Telephone Co.	8,425.00	2,400.00	2,700.00	300.00(1)
Belgrade	Chouteau Telephone Co.	600.00	48.00	27.30	20.70
Browning	St. Mary's International Telephone Co.	6,546.75	4,177.72	4,461.83	284.11(1)
Broadview	Chester Telephone Co.	3,275.00	4,885.92	4,900.91	14.99(1)
Chester	Southern Telephone Co.	3,245.00	1,875.00	1,550.00	325.00
Chinook	Chinook-Cleveland Telephone Co.	3,426.45	1,021.85	963.15	58.70
Creston	Eastside Telephone Co.	10,210.00	5,256.68	4,825.94	530.74
Carlisle	Beaver Valley Telephone Co.	5,970.00	1,594.92	1,698.43	103.51(1)
Circle	Farmers & Ranchers Telephone Co.	13,000.00	4,818.28	4,668.70	149.58
Dillon	Southern Montana Telephone Co.	5,130.00	1,171.55	727.62	443.93
Darby	27,762.92	8,971.52	9,230.74	259.22(1)	479.41(1)
Dell	Darby-Wisdom Telephone Co.	1,635.35	1,011.14	1,490.55	479.41(1)
Edkalaka	Dell Telephone Co.	Discontinued			
Eureka	Ekalaka Telephone Co.	4,000.00	3,354.51	3,328.30	26.21
Edgar	Eureka Mutual Telephone Co.	8,409.17	2,634.90	1,514.09	1,170.81
Edgar	Lee Simonsen Line				
Fishtail	West Rosebud Co-operative Telephone Co.	500.00	484.69	239.41	245.28
Froid	Froid Telephone Exchange	5,661.54	2,248.30	2,050.00	198.30
Fairview	St. Louis Pass Farmers Exchange Co.	6,450.00	903.20	914.12	10.92(1)
Froid	Farmers Telephone Co.	19,258.51	1,830.66	1,021.60	809.06
Flowerlee	Flowerlee Mutual Telephone Co.	3,851.45	625.62	912.44	286.82(1)
Fort Benton	Pleasant Valley Farmers Telephone Co.	300.00	554.18	554.18	554.18
Glendive	Pioneer Telephone Co.	18,738.77	3,823.38	3,298.36	525.02
Grass Range	Grass Range Telephone System	6,125.06	2,409.51	2,161.19	248.32
Hayre	Hayre-Box Elder Telephone Co.	2,300.00	199.20	158.64	40.56
Helena	Mountain States Telephone & Telegraph Co.	8,810,989.84	2,387,865.80	1,908,406.87	479,368.93(2)
Hill	Sweetgrass Hills Telephone Co.	7,155.00	646.34	158.64	37.38
Hysham	Independent Telephone Co.	4,011.48	3,219.09	2,850.97	368.12
Hall	Hall Telephone Co.	2,855.00	868.58	568.47	300.11
Hingham	Hingham Telephone Co.				
Hot Springs	Flathead Mutual Telephone Co.	Discontinued			
Hysham	Sarpy Mutual Telephone Co.	5,125.03	124.13	1,389.40	574.08
Ismay	Golden Valley Telephone Co.	See Baker	87.78		36.35
		4,485.00	1,963.48		

Intake	Intake Telephone Co.	1,922.55	717.65	770.84	53.19(1)
Inverness	Farmers Telephone Co.	3,666.43	554.49	307.99	246.50
Isamay	Light & Telephone Co.	1,696.65	1,921.92	2,099.78	177.86(1)
Judith Gap	Judith Telephone Co.	4,000.00	2,520.00	2,349.96	170.04
Judith Gap	Western Farmers Mutual Telephone Co.	1 is continued			(3)
Joliet	Carbon County Farmers Telephone Co.	2,875.00	903.05	1,209.81	306.76(1)
Joplin	Farmers Mutual Telephone Co., Hill Co.	7,513.98	661.75	686.25	696.25
Kalispell	Mountain States Power Co.	4,948.33	65,825.82	43,148.61	22,677.21(4)
Lambert	Three Buttes Co-operative Telephone Co.	4,992.00	1,244.53	607.55(1)	607.55(1)
Lavina	Lavina Mutual Telephone Co.	4,497.82	3,921.27	3,921.27	576.55
Libby	Libby-Troy Telephone Co.	18,062.58	9,411.91	11,035.28	1,622.37(1)
Lame Deer	Rosebud Mutual Telephone Co.	12,950.00	2,698.99	2,453.00	245.00
Malta	Malta-Zortman Telephone Co.	3,500.00			
Miles City	Miles City-Ekalaka Telephone Co.	9,212.00	944.87	1,228.46	233.39(1)
Missoula	Nathad Independent Telephone Co.	2,750.00	570.00	320.55	240.45
Meville	Northern Telephone Line	1,450.00	2,571.34	2,460.90	110.44
Manhattan	Galatin-Madison Telephone Co.	1,073.00	409.69	539.98	49.71
Musselshell	Musselshell Telephone Exchange	11,788.50	5,124.70	5,595.50	129.20
Moccasin	Farmers Mutual Telephone Co.	14,888.36	5,564.31	5,125.57	438.74
Norris	Bozeman-Norris Telephone Co.	1,075.00	3,286.65	2,599.05	687.60
Norris	Citizens Telephone Co.	See Carlyle			
Ollie	Beaver Valley Telephone Co.	3,550.00	938.86	674.20	284.86
Ovando	Blackfoot Commercial Co.	2,383.84	976.25	763.20	213.05
Plevna	G. E. Wilson Telephone Co.	538.55	160.85	32.18	138.67
Power	Plainview Telephone Co.	6,893.78	2,095.02	2,259.28	164.26(1)
Potomac	Potomac Telephone Co.	Discontinued			(3)
Ryegate	Central Montana Telephone Co.	9,197.43	1,585.36	1,557.85	97.51
Rudyard	Goldstone-Rudyard-Brinkman Telephone Co.	422.25	175.00	31.00	144.00
Superior	A. P. Johnson	See Missoula			
St. Ignatius	Flathead Independent Telephone Co.	1,950.00	346.06	281.40	64.65
Savage	Midway Telephone Co.	192.24	800.00	800.00	
Simms	Simms Telephone Co.	13,200.00	800.00	280.00	530.00
Saco	Mutual Telephone Co.	3,318.63	766.47	699.00	67.47
Sweetgrass	Sweetgrass Telephone Co.	See Libby			
Troy	Libby-Troy Telephone Co.	967.20	280.76	280.55	21
Valler	Francis Heights Telephone Co.	8,697.17	3,780.26	3,482.51	297.75
Wilsall	Wilsall Telephone Co.	760.00	434.00	401.80	32.20
Wise River	Dewey Telephone Co.	10,434.44	3,854.58	4,293.83	469.25(1)
Wilsall	East Flathead Telephone Co.	6,792.78	3,846.83	3,844.02	2,078.02
White Sul.	Eastern Montana Light & Power Co.			3,250.35	596.48
White Sul. Sps.	Springs Exchange				
Winnett	Burt Sisters				

(1) Deficit.

(2) Mountain States Telephone and Telegraph Company includes the following Cities and Towns:

Anaconda, Basin, Belgrade, Belt, Billings, Boulder, Brady, Bridge, Butte, Cardwell, Cascade, Choteau, Clyde Park, Co'umbus, Conrad, Culbertson, Cut Bank, Deer Lodge, Denton, Dillon, Drummond, Fairview, Forsyth, Fort Benton, Fremont, Geraldine, Glasgow, Glendive, Great Falls, Hamilton, Harlin, Harlowton, Havre, Helena, Hilger, Hinsdale, Hobson, Joliet, Joplin, Lambert, Laurel, Lewistown, Livingston, Malta, Manhattan, Med-icine Lake, Miles City, Missoula, Mondak, Moore, Phillipsburg, Plains, Poplar, Plentywood, Red Lodge, Roundup, Ryegate, Saco, Salesville, Savaye, Scheby, Sheridan, Sidney, Stanford, Stevensville, Terry, Thompson Falls, Three Forks, Townsend, Twin Bridges, Valler, Victor, Virginia City, Whitehall, Winifred, Wolf Point.

(3) Discontinued.

(4) Mountain States Power Company includes, Kalispell, Whitefish, Columbia Falls, Somers, Kila and Big Fork.

STREET RAILWAYS OPERATING IN MONTANA

Investment in Plant and Equipment, Operating Revenues and Operating Expenses for the Year Ended December 31, 1920.

Location	Company	Plant and Equipment	Operating Revenues	Operating Expenses	Gross Income from Operations, or Deficit
Anaconda.....	Anaconda Copper Mining Co.....	385,833.38	84,244.17	101,218.93	16,974.76(1)
Butte.....	Butte Electric Street Railway.....	2,175,142.86	637,776.25	602,426.07	35,350.18
Great Falls.....	Great Falls Street Railway.....	496,388.21	192,210.03	160,775.53	31,434.50
Helena.....	Helena Light & Railway Co.....	581,236.73	100,109.69	133,961.04	33,831.35(1)
Missoula.....	Missoula Street Railway.....	714,655.13	118,186.29	100,558.32	17,627.97
(1) Deficit.					

GAS UTILITIES OPERATING IN MONTANA

Investment in Plant and Equipment, Operating Revenues and Operating Expenses for the Year Ended December 31, 1920.

Location	Company	Plant and Equipment	Operating Revenues	Operating Expenses	Gross Income from Operations, or Deficit	Type
Billings.....	Billings Gas Co.....	544,088.66	107,509.47	84,475.70	22,833.77	Water Gas
Butte.....	Montana Power Co.....	358,873.60	156,849.00	153,623.10	3,225.90	Coal Gas
Baker.....	Montana Petroleum Co.....	237,987.58	31,913.32	22,422.99	9,490.33	Natural Gas
Great Falls.....	Great Falls Gas Co.....	829,795.04	109,499.20	79,750.68	29,748.52	Coal & Water Gas
Glendive.....	Eastern Montana Oil and Gas Co.....	219,607.73	18,851.30	33,863.15	15,011.85(1)	Natural Gas
Helena.....	Helena Light & Railway Co.....	300,411.52	59,663.75	62,393.21	2,729.46(1)	Coal & Water Gas
Hayden.....	Hayden Natural Gas Co.....	117,282.04	26,979.23	28,162.53	1,153.30(1)	Natural Gas
Missoula.....	Missoula Gas Co.....	373,901.09	47,108.94	47,931.56	822.62(1)	Coal Gas
(1) Deficit.						

HEATING UTILITIES OPERATING IN MONTANA

Investment in Plant and Equipment, Operating Revenues and Operating Expenses for the Year Ended December 31, 1920.

Location	Company	Plant and Equipment	Operating Revenues	Operating Expenses	Gross Income from Operations, or Deficit	Type
Billings.....	Billings Utility Co.....	225,445.37	88,498.10	73,109.79	15,818.31	Hot Water
Butte.....	Montana Power Co.....	.....	172,449.85	156,464.46	15,976.39	Steam
Forsyth.....	Forsyth Electric Light & Power Co.....	.....	12,125.28	8,735.15	3,390.13	Steam
Glendive.....	Eastern Montana Light & Power Co.....	.....	19,964.71	19,667.18	797.53(2)	Steam
Hamilton.....	Valley Mercantile Co.....	.....	7,340.85	7,340.85	.....	Steam
Missoula.....	Missoula Light & Water Co.....	163,210.23	77,443.74	76,518.47	925.27	Steam
Miles City.....	Municipal.....	51,830.33	33,580.35	30,768.91	2,811.44(1)	Steam

(1) Fiscal year for municipally owned public utilities covers period from May 1st to April 30th.

(2) Plant and equipment included in electric utility report.

TELEGRAPH COMPANIES OPERATING IN MONTANA

Investment in Plant and Equipment, Operating Revenues and Operating Expenses for the Year Ended December 31, 1920.

Main Office	Company	Plant and Equipment	Operating Revenues	Operating Expenses	Gross Income from Operations, or Deficit
Milwaukee, Wisc.....	Continental Telegraph Co.....	.....	53,943.77	68,673.12	14,729.35(1)
New York, N. Y.....	Postal Telegraph-Cable Co.....	50,000.00	99,064.07	96,066.94	2,997.13
New York, N. Y.....	Western Union Telegraph Co.....	1,066,000.00	132,272.88	131,057.82	1,215.06(2)
Miles City.....	Miles City-Jordan Wireless Co.....	875.00	1,563.16	1,427.51	135.65

(1) Deficit.

(2) 1919 Estimate.

HINTS FOR GAS CONSUMERS

(Reading of Gas Meters.)

Helena, Montana,
October 31, 1921.

To Gas Consumers,
State of Montana.

This Commission has recently adopted a set of Standards for Gas Service in Montana, which will serve to guarantee the quality of the product of your company. The rules require a definite heating value and pressure, and include periodic tests of all service meters. Each company is required to make a permanent record of the results of all tests, and these are checked from time to time by our engineering staff.

Gas, with the possible exception of electricity, is the cleanest and best fuel known to man. It is our desire that you receive the maximum benefit from the gas you purchase, and we have prepared, therefore, some instructions for its proper utilization. In the majority of complaints made to us, consumers report that they pay no attention to their meter readings. The modern gas meter is a wonderfully accurate instrument, and is designed to give you an itemized statement of the gas you use daily. Believing that the most efficient use of gas includes a study of your meter performance so that you may know the requirements of the various appliances, we have prepared instructions for reading your meter, with a standard form for recording the results.

The consumption per capita of water, electricity and gas is unusually high in Montana. After our study, we are convinced that there is an excessive waste which can be eliminated, and which will materially reduce your bill for service.

We solicit the co-operation of the housewives, and will appreciate reports of your experience, with suggestions for economy that we might properly include in future pamphlets for the benefit of others.

If your community is served with natural gas, we would suggest that you write the Bureau of Standards, Washington, D. C., and request a copy of their circular, "How to get Better Service with Less Natural Gas in Domestic Gas Appliances."

Should you be interested in reading our rules governing Standards of Gas Service as furnished by Utilities in Montana, a copy in pamphlet form will be mailed you on request.

Introduction.

The monthly bill for gas is considered one of the incidental bills connected with the maintenance of the average household, yet less than thirteen thousand consumers in Montana paid over half a million dollars for this class of service last year, the average cost being about \$38.00.

The Commission requires that each utility selling manufactured gas shall maintain the monthly average of the total heating value of such gas at any point within one mile of the manufacturing plant at not less than 475 British thermal units per cubic foot. A British thermal unit, commonly abbreviated BTU, represents the amount of heat necessary to raise the temperature of one pound water, 1 degree Fahrenheit. It is heat units that the consumer purchases rather than a given volume of invisible gas, and if a commercial meter could be devised that would record BTU, gas would be sold on that basis rather than the cubic foot unit of measure. The Commission, by frequent tests and inspections sees that each utility lives up to the requirement, the burden of getting the maximum efficiency from heat units purchased is up to the individual consumers and cannot be supervised by the Commission except by general information as contained on the following pages.

We are frequently called upon for information as to the comparative cost of cooking with gas and electricity. The answer varies according to local rates in effect in the various cities and towns, and depends to a large extent on the individual concerned. Take Helena for example, the net cost of gas is \$2.05 per 1,000 cubic feet, and electricity for cooking costs 3c per Kilowatt hour.

1 Kw. Hr. electricity has a heating value of 3412 BTV, and costs 3c.

1 Cu. ft. of gas has a heating value of 475 BTU, and costs 2-10 of 1c.

3,412 BTU in gas would require 7.1 cu. ft., costing 1.45c.

However, because of the high efficiency of electric heating appliances, gas can be utilized only one half as efficiently as electricity, which would bring the cost of 3,412 BTU of gas up to 2.9c as compared with 3c for electricity. Some housewives prefer to pay the small excess for electricity claiming superior convenience, cleanliness and comfort. Others point out the advantage of gas in that the 50 per cent loss in actual cooking is made up by the kitchen being partially heated by the lost radiation in cold weather. Calculations therefore show the choice to be a matter of personal preference.

Montana Natural Gas contains 1000 heat units per cubic foot, and in Montana communities where it is available, sells at half the cost of manufactured gas, therefore electricity cannot compete with gas for cooking in these communities.

Comparing the fire hazard of electricity and gas, the National Board of Fire Underwriters has prepared the following statistics for the years 1915 to 1919 inclusive.

Losses from fires caused by artificial and natural gas, 5 years, \$10,203,330.

Losses from fires caused by artificial and natural gas, yearly average, \$2,040,666.

Losses from fires caused by electricity for 5 years, \$84,086,471.

Losses from fires caused by electricity yearly average, \$16,817,294.

Of the 22 causes of fires classified:

Gas, natural and artificial ranked 17th in the extent of losses.

Electricity ranked 8th in the extent of losses.

Your Gas Meter.

Contrary to the general belief, the gas meter is one of the most reliable measuring devices known today. Though inventors throughout the world have been making scientific investigations and tests, they have succeeded in improving on details only, and the meter in your home today is constructed on practically the same mechanical principals as the first meter used by the Gas Company in London in 1844.

The operation of the meter is very simple, and is often compared with the action of human lungs. The gas is inhaled from the street mains by leather bellows and thence exhaled into your service pipe, there are two diaphragms or bellows in your meter so arranged that when one is inhaling gas, the other is exhaling, producing a constant flow of gas to your range.

By means of levers attached to the bellows, each inhaling and exhaling movement is registered on the index of your meter, that is, the capacity of the bellows is automatically multiplied by the number of movements and the result appears as cubic feet on your meter index. The gas meter is set on your premises and the reading thereof open to your inspection, so that you have the opportunity of knowing exactly how your account stands with the company at any hour of the day, and thus keep track of any increase or decrease in the use of the fuel.

You would hardly expect the coal company, the grocer or butcher to install scales at your house for the measurement of your daily purchases, but that is exactly what is done by your gas and electric companies. A meter of any sort is looked upon with suspicion by the buying public. Gas companies, even if they wished, could not afford to set fast meters, in the first place manufacturers do not issue incorrect meters, and take as much professional pride in their product as the makers of high grade watches and clocks.

The gas utilities operating in Montana are required to test all meters at regular intervals. Historical records are kept of each test from the date of purchase to its final disposal. Average net results of tests show that meters are inclined to be "slow" (or to the advantage of the consumer.) This is because of the tendency of the gas to pass through without moving the bellows. Some few register "fast." This is caused by a derangement of the meter or gears and is impossible to avoid because no mechanical device is perfect.

It is the desire of the Commission that each consumer get the most out of the gas; we require regular calorimeter tests in order that the heating value may be held up to standard at all times; meters are correct within the allowable limit 99 cases out of 100. Wasting gas is burning money. Your company wants you to get the maximum efficiency from the fuel because waste means large bills, complaints, re-reading of meter, delayed payments and other expenses. Satisfied customers are worth more to any company than revenues derived from wasted gas.

How to Reduce Your Gas Bills.

1. Read your meter, and make a daily or weekly record of same. This will give you a knowledge of the gas requirements of your appliances, and will show you where savings can be made.

2. Keep your burners clean. Wash burners in boiling water and soda at least once a month, and have them dry before using. Burn out the grease in a coal fire occasionally. Choked burners mean unconsumed gas and consequent loss of heat units.

3. Adjust the air intake. A yellow smoky flame is most wasteful. A small blue or green cone shaped flame is much hotter and requires less gas.

4. Don't use the giant burner on your gas range when a smaller burner will do. Use the smallest burner that will answer the purpose.

5. Don't light burners on your range until you have food ready to go on the fire. Unlike a coal fire, gas is as hot the instant it is lighted as ten minutes later.

6. Don't allow a burner to remain lighted without being in use. Turn out the gas and relight it in the event there is an interval when it is not needed. Matches are cheaper than gas.

7. Don't use the gas oven to heat your kitchen.

8. Don't heat a kettle full of water when you need only a quart.

9. Don't keep a full flame under container when water has reached the boiling point. Turn down the flame or set utensil over small simmer burner.

10. Don't turn off cock part way at meter. This does not save gas, but reduces the pressure and interferes with good service.

11. Don't purchase from agents so-called gas saving devices without first asking your company whether they are of value.

12. Don't expect to use gas efficiently in an old work out range, or one with burners out of adjustment.

13. Don't use the ovens of your gas range for the storage of food. This rusts the oven.

14. Don't use solid plates between the flame and utensil, the burner should not be over 1 inch from the bottom of the utensil resting directly on the grid top or skeleton lid.

15. Use the gas oven to its fullest capacity on baking days. Plan to have a baked dinner when you bake.

16. Use triple sauce pans over one burner. You can cook three vegetables for the cost of cooking one.

17. Read your meter, knowledge of your daily consumption will induce you to save, and after you acquire knowledge of the demand of your various appliances you will discover economies you had not thought of before.

18. If you are having trouble with your meter or service, or are in doubt regarding the adjustment of appliances, notify the gas company. If they do not give you satisfactory results write the Secretary of the Public Service Commission.

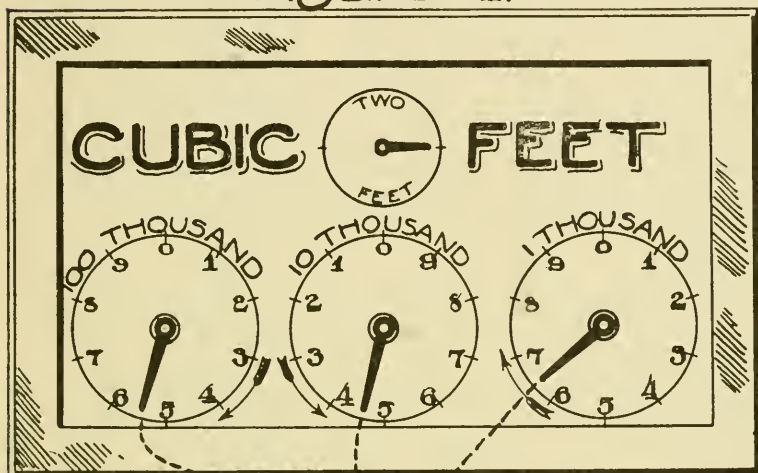
How to Read Your Meter.

The reading of a gas meter is as simple as reading the time of day on your clock. Gas is sold in this state on the basis of 1,000 cubic feet. The rate varies for manufactured gas from \$1.30 to \$2.25 per thousand feet. Having the reading it is a simple case of multiplication to compute the amount of your gross bill. A meter registers continuously, so in order to determine the quantity consumed

in any one day, it is necessary to subtract the reading at the beginning of the month from the reading at the end of the previous month, thus:

Meter reading October 31st	54,600
Meter reading September 30th	52,600
	2,000
Gas consumed during month. Rate \$1.95 per 1,000 cu. ft.	
Gross bill 2 x \$1.95 is	\$3.90
Discount 10c per 1,000 cu. ft.	20
— Net bill	\$3.70

Figure 1.



Reads 5, 4, 6, Recorded 54,600

Figure 1, illustrates the index of an ordinary gas meter. The small top dial which is marked "Two feet" inside of the circle is called the "Testing Circle" and is used principally in testing the meter. This dial is ignored in the ordinary readings, but you may make tests yourself to determine the gas used by any burner, stove or appliance on your premises.

One complete revolution of the hand of the "Testing Circle" indicates that two cubic feet of gas has passed through the meter. (In some meters, one revolution of the hand may represent more or less than two cubic feet, in which case it will be correspondingly marked.) To determine how much gas a certain burner or appliance uses, light the gas, take your watch and count the number of revolutions in ten minutes. As each revolution represents two feet you will know how many feet are burned during the test. Multiply the ten minute consumption by six and you

will know how much gas is used in an hour. Each burner and appliance may be tested in turn. The average gas consumption of burners on standard ranges is as follows:

	Cubic feet per hour
Boilers	50
Oven Burners	40
Giant Burners	20
Medium Burners	15
Simmer or smaller burners	5

The requirements of hot water and other heaters vary according to the size, make and other conditions.

Each of the other three dials of the index is marked with the volume of gas passed during a complete revolution, and subdivided into ten equal parts. It will be noted that the hands of the 100 thousand and 1 thousand dials revolve in a clock-wise direction, while the hand of the middle dial moves in the opposite, or counter clock-wise direction. The reading should be done in the same manner. The gearing is in the ratio of 10 to 1 so that while the middle hand is making one revolution, the hand on the 1 thousand dial makes ten revolutions and the 100 thousand dial 1-10 of one revolution.

In reading the meter, start at the left dial and mark down the figures that the pointer has **last passed**. Determine the direction in which the pointer moves by the direction in which the figures 0-9 are placed on the dial. Do not count the figure to which the pointer happens to be nearest. Count the one it has just passed, no matter how near it may be to the next higher figure. The meter is read to the closest 100 feet only, so to the three figures set down, add two ciphers and you have the reading of your meter.

To illustrate further, the reading of the three dials of the index illustrated in Figure 1, is 546 adding the two ciphers gives you a reading of 54,600.

Convenient tables for recording your meter readings, either monthly or daily is illustrated in Figures 2 and 3. The readings are set down in order from the bottom of the card to the top so that the figures may be in proper order for subtraction. It is suggested that the table be either copied or pasted on a sheet of card board, and suspended by a string with pencil attached for convenience in recording the readings.

FIG. 2.

MONTHLY GAS RECORD

Name _____

Address _____

Year 192_____

LAST YEAR		Month	THIS YEAR						
Gas Used	Net Bill		Date	Meter	Consumed	Rate	Gross Bill	Disc.	Net Bill
	00	December				00			
	00	November				00			
	00	October				00			
	00	September				00			
	00	August				00			
	00	July				00			
	00	June				00			
	00	May				00			
	00	April				00			
	00	March				00			
	00	February				00			
	00	January				00			
	00	Total				00			

EXAMPLE OF USE

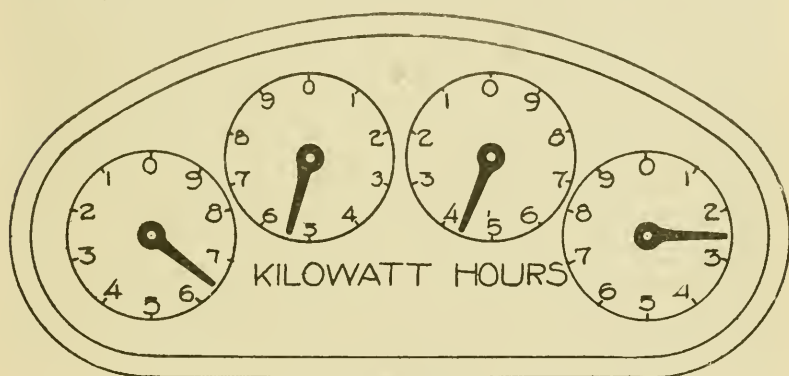
Subtract August meter reading, from September reading, multiply result by rate and you have amount of your gross bill.

16000	8525	00							
26000	8535	September	30 th	961	16000	2 ²⁵	8360	521	520
30000	8615	August	31 st	945	32000	2 ²⁵	8720	64	656
28000	8574	July	31 st	913	28000	2 ²⁵	8630	56	574
20000	8410	June	30 th	885	18000	2 ²⁵	8405	36	369
			31 st	867	12000	2 ²⁵	8270	24	246

READING OF ELECTRIC METERS

The unit of sale of electrical energy is the "kilowatt-hour," one kilowatt being 1000 watts. The quantity used is measured by a watt-hour meter installed on each consumers premises. Most of the companies in this state read their meters during the last week of the month, and the bills are presented about the first of the following month. The invoice, therefore, covers a period of approximately one month; in some few instances where consumers desire to keep their accounts by calendar months, the meters are read on the last day of the month.

The reading of a meter is cumulative, corresponding with the device on an auto speedometer that registers the total mileage traveled by a car. In computing the electric consumption during a month, or any given period, the meter reading at the beginning of the period is subtracted from the meter reading at the end of the period, the difference representing the number of kilowatt hours used during the interval.



METER DIAL

READING 6542

There is a great variety in the marking, number and arrangement of dials in the meters placed on the market by the different manufacturers, and this condition makes it extremely difficult to offer a clear and concise description of the method of reading meters. An example is given of the simplest form of dial. Each division on the right hand dial represents one kilowatt hour. To read your meter start with this dial hand and set down the reading of each dial hand to the left in succession, placing the figures in the same order as read, being sure to take those figures which the dial hand has last passed. Determine the direction in

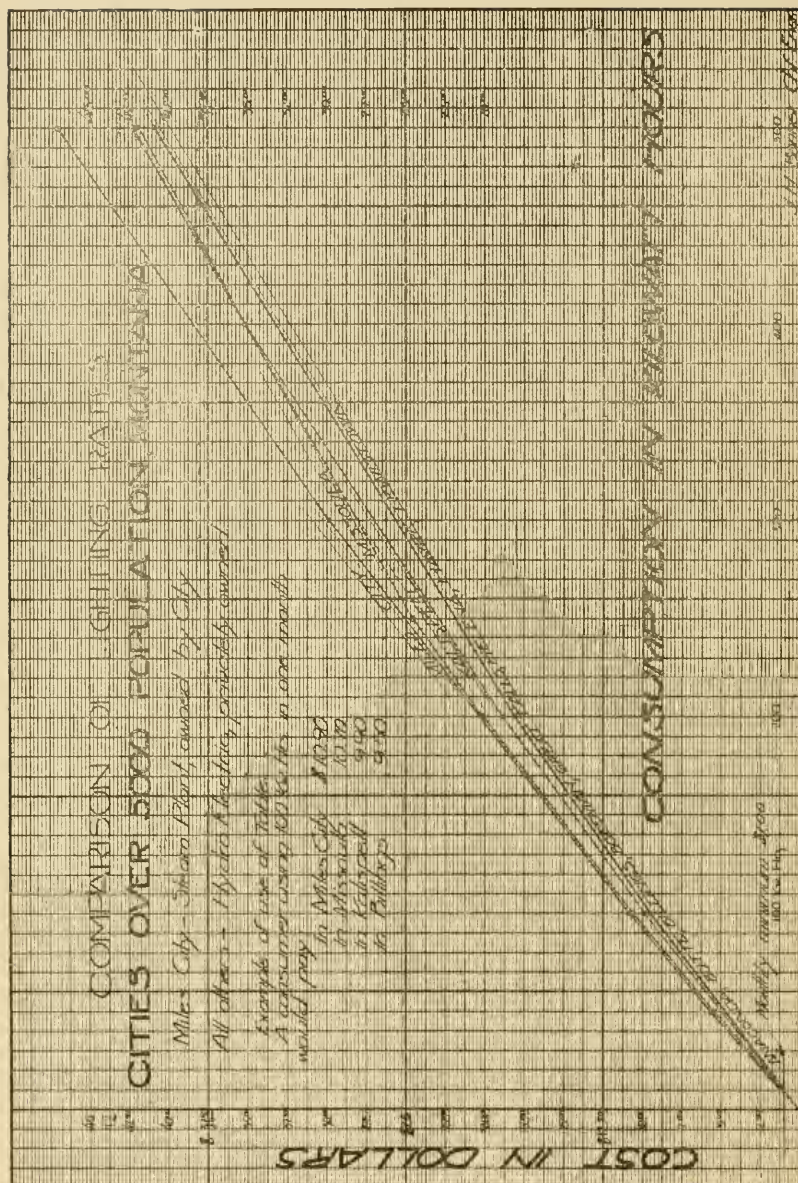
which the pointer moves by the direction in which the figures are placed on the dial. Do not count the figure to which the hand happens to be nearest; count the one it has last passed no matter how near it may be to the next higher figure.

For uniformity the dial faces of all meters of the same style are the same without regard to the capacity of the meter, so that in some sizes a multiplying factor called a "register constant" becomes necessary. This register constant is definitely fixed by the manufacturer and is plainly indicated on the dial face as "Multiply by——." If two such constants appear on the dial face, always use the lesser; if there is none, then the dials are direct reading. To check the number of kilowatt hours consumed as indicated on your bill, deduct "previous meter reading" from "present meter reading" and multiply by "register constant," if any.

Learn to read your meter and compare your readings with bills received from the company. The same advice given elsewhere in this volume, showing the advantage of consumers reading their gas meters at regular intervals, applies to the electric meter. Similar forms should be devised for making a record of all readings. Some companies in other states now rely on their consumers to make all readings and report by special post card prepared for the purpose. This policy not only instructs the consumer and removes his suspicion of the meter, but results in a large saving in cost of service, reflected by lower rates. As shown elsewhere, the average cost of reading meters, billing and collecting of one large utility in this state last year was \$6.15 per consumer per year; the average revenue per consumer per year was \$21.00. Thus, reducing the yearly basis to a monthly basis, nearly one third of the money taken in each month was spent in reading meters and collection the following month.

The following is an example of computing a bill the meter readings being known. Assume the general lighting rate effective in Butte, Helena, Billings, Great Falls and other Montana cities of 10c per kilowatt hour, with a 5 per cent discount for prompt payment.

Meter reading November 30th	6.543
Meter reading October 31st	6.441
Kilowatt hours consumed	102
102 KW HR @ 10c	\$10.20
Less 5% discount	.50
Net bill	\$ 9.70



COMPARISON OF LIGHTING COSTS IN CITIES AND TOWNS SERVED BY THE MONTANA POWER CO.

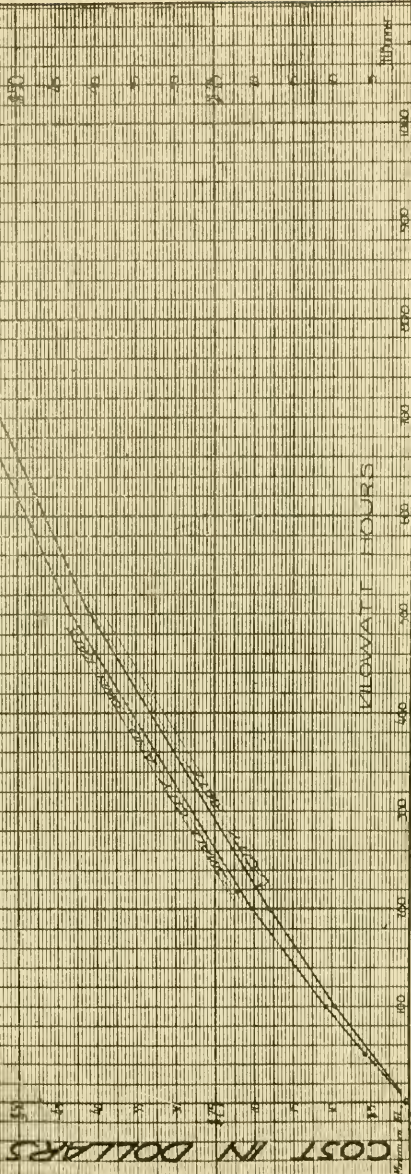
Lower line illustrates cost of equipment at Bulla Creek Falls, Billings, Lewis & Clark County, etc.
Burlington and other cities exceeding 100,000 population.

Upper line illustrates cost of equipment in cities about 10,000 of less. If you
2,000 population, as Big Timber, Whitehall, Constance, etc.

CONSUMPTION IN KWH

COST IN DOLLARS

KILOWATT HOURS



BOOK II PART VII
MONTANA TRADE COMMISSION
Informal Orders, Statistics, Administration, etc.

FLOUR MILLING IN MONTANA

The first flour mill built in what is now Montana, was erected at Saint Mary's Mission near the present town of Stevensville, in 1846, by Father Ravalli, a Jesuit Missionary. The equipment consisted only of a pair of small burrs, one of which is now preserved in the state historical library at Helena. There were no bolting reels; the wheat was simply crushed producing a coarse whole wheat flour. The burrs were brought from Walla Walla by pack horses and set up on the banks of Burnt Fork Creek. The power employed was developed by an overshot water wheel utilizing the waters of this creek. This Mission property was sold to Major John Owen in 1850 and he built a new mill near the site of the old one in 1856. The burrs for the new mill were made from granite taken from the canyon now known as Mill Creek canyon. In 1865 this mill was supplanted by a larger plant erected on the same site; better and more modern equipment was installed and a higher grade of flour produced. As farming increased and the population of the territory became larger, other mills were built at Missoula, Bozeman, Gallatin and other settlements in the territory. Later, other mills, equipped with rolls and modern separating machinery and having an increased capacity, were built at Bozeman and Great Falls. The building of these plants was soon followed by the erection of modern mills at Billings, Missoula, Kalispell, Lewistown, Belgrade, Cascade, Harlowton and other points until at the present time Montana has 73 mills with a total capacity of 12,758 barrels of flour every 24 hours.

According to the annual report of the United States Department of Agriculture, Montana produced 19,850,000 bushels of wheat in 1920. After deducting a liberal amount for seed for the season of 1921, there would be left 18,000,000 bushels for milling into flour and feed for human and animal consumption. As there were only 6,173,725 bushels milled in Montana during the fiscal year ending June 30, 1921, there must have been nearly twelve million bushels shipped out of the state for conversion into flour and its by-products by mills located elsewhere. Had this large amount of raw material been milled in Montana and shipped as manufactured products instead of wheat, it would have added greatly to the industrial development of the state.

Exchange Rule.

From time immemorial "Grist Mills" have voluntarily established some ratio of exchange whereby the grower of wheat might exchange raw material for manufactured products. The ratio varied, according to custom, in different lo-

calities and was commonly designated as "toll or grist;" the miller retaining a percentage of the grain as payment for the grinding and cost of sacks or containers for the flour and feed returned to the wheat grower.

In arriving at a just and equitable maximum rule, which should be fair to both wheat grower and miller, the Commission had to consider three vital factors, the determination of which was of paramount interest to both farmer and miller. These three important factors were:

First: The amount of manufactured product the farmer was entitled to receive for each bushel of wheat tendered for exchange. The conversion of any raw material into manufactured products necessarily involves some waste.

Second: After determining what the invisible loss or waste would average, it was necessary to learn what was a just and fair ratio of flour and its by-products (mill feed) for each bushel of wheat exchanged.

Third: What sum was the miller entitled to receive as fair compensation for the up-keep and operation of his plant?

It was obvious that the old method of "toll" was not a correct basis; it was neither fair to farmer or miller. When wheat was high in price, the amount retained by the miller as toll might be in excess of a reasonable compensation; when wheat was low in price a toll basis might not be a fair sum for the cost of service rendered. The decision of the first two problems was made after a thorough investigation of milling operations; the method adopted to arrive at a fair charge, by the miller, is set forth in Report and Order Number 307, a copy of which is included in this report, at page——.

Quality of Wheat.

One of the chief factors that enter into the quality of product produced by any manufacturing plant is the grade of raw material used. In this respect the flour mills located in Montana are fortunate. In no section of the United States is the wheat superior for making a high grade bread flour, than the hard spring and winter wheat grown in our state. The large percentage of dry gluten and other desirable elements of Montana grown wheat combine to produce a grade which is very superior for the manufacturing of choice patent flour. The best flour is made from a proper blending of two or more kinds of wheat and, as Montana farms produce the best varieties of both winter and spring wheat, it naturally follows that wheat grown in our state is sought by millers who demand the very best raw material obtainable.

Statistical.

There are 73 flour mills in Montana at the present time. Sixty-two of these mills are located at points where they have direct connection with main or branch lines of railroads; eleven are located at interior points with no direct railroad connections. Thirty-four of these mills are operated by electric power, ten by steam, three by water power, eight by gasoline engines, sixteen by coal oil engines, and two by combination of water and electric power. The rated daily capacity of these 73 mills, 24 hours continuous operation, is 12,758 barrels. Forty of these mills are equipped with what is known as "Long System" equipment which enables them to manufacture two or more grades of flour; the other thirty-three are what is generally known as "Midget" plants and make only one grade of flour, their "cut off" going into mill feed. During the year, ending June 30, 1921, there were 6,173,725 bushels of wheat ground in Montana mills, from which there were manufactured 1,400,539 barrels of flour (all grades) and 47,958 tons of bran and mill feed. This is an increase over the record for the year previous (June 30, 1919 to June 30, 1920) of 2,508,596 bushels of wheat and 582,823 barrels of flour. Owing to a better quality of wheat or more efficient milling the average yield or extraction; i. e., the amount of wheat required to make a barrel of flour, was 4.408 bushels this latter period (June 30, 1920 to June 30, 1921) as against 4.482 bushels for the period of June 30, 1919 to June 30, 1920. The cost of sacks or containers for flour and feed was \$773,109.16. The wheat cost \$10,594.897.76, or an average of \$1.716 plus per bushel.

Exchange of Wheat For Flour.

The Polson Farm Bureau of Polson Montana, filed complaint with this Commission alleging that the Polson milling Company was violating its obligations in that it had failed and refused to deliver flour in exchange for wheat in sacks bearing the brand and name of the Milling Company; that the flour was being delivered by the said Polson Milling Company in plain cloth sacks, and it was suspected that the flour was of an inferior quality, upon which the millers would not place their name.

An investigation was made and it was found that the farmers were making a practice of having large quantities of wheat converted into flour, and were selling it from house to house, and for this reason the Polson Milling Company declined the use of its own brand, stating that the farmers were selling the flour direct to consumers at a lower price than the mill could afford to sell to its trade, and that the practice of the farmers in this respect was seriously interfering with the Mill's legitimate business.

The law under which the exchange of wheat for flour is made does not specify any certain quantity which a farmer may ask to have converted into flour. We believe, however, that it was the intention of the Legislature to give the farmer this privilege for his personal use only, and that it was not contemplated at any time that the farmers would enter the commercial market. The law does not require that the sacks in which the flour is delivered shall be printed or stamped, and in making delivery of the flour in plain cotton sacks the mill is within its legal rights. There is nothing in the record of this investigation to indicate that the flour complained of was in any way of inferior quality.

MILLS
Under the Jurisdiction of
MONTANA TRADE COMMISSION

Mills Under Jurisdiction Montana Trade Commission.

Owner or Operator	City or Town	County	Railroad Connection	*Capacity Barrels
Royal Milling Co.	Great Falls	Cascade	Great Northern and C. M. & St. Paul	2,200
Montana Flour Mills Co.	Great Falls	Cascade	Great Northern and C. M. & St. Paul	1,500
Montana Flour Mills Co.	Harlowton	Wheatland	C. M. & St. Paul	675
Montana Flour Mills Co.	Lewistown	Fergus	C. M. & St. Paul	400
Montana Flour Mills Co.	Bozeman	Gallatin	Northern Pacific and C. M. & St. P.	650
Russell-Miller Milling Co.	Billings	Yellowstone	N. P.-C. B. & Q. and Great Northern	600
Russell-Miller Milling Co.	Sidney	Richland	Northern Pacific and Great Northern	400
Ravalli Flour & Cereal Mills	Missoula	Missoula	Northern Pacific and C. M. & St. Paul	600
Jennison Mills Co.	Rainville	Roosevelt	Great Northern	500
Kalispell Flour Mills Co.	Kalispell	Flathead	Great Northern	400
Glasgow Flour Mills Co.	Glasgow	Valley	Great Northern	275
Gallatin Valley Milling Co.	Belgrade	Gallatin	Northern Pacific and C. M. & St. Paul	250
Cascade Mill & Elev. Co.	Cascade	Cascade	Great Northern	250
Northwestern Milling Co.	Helena	Lewis & Clark	Great Northern	200
Park County Milling Co.	Livingston	Park	Northern Pacific	200
Cascade Mill & Elev. Co.	Manhattan	Gallatin	Northern Pacific	200
Poison Flour Mills	Poison	Flathead	Northern Pacific	200
Three Forks Mill and Elev. Co.	Three Forks	Gallatin	C. M. & St. Paul	225
Inter-Mountain Milling Co.	Townsend	Broadwater	Northern Pacific	225
Cut Bank Milling Co.	Cut Bank	Glacier	Great Northern	150
Terminal Milling Co.	Geraldine	Choteau	C. M. & St. Paul	150
Judith Milling Co.	Hobson	Judith Basin	Great Northern	150
Bjorneby Milling Co.	Kalispell	Flathead	Great Northern	150
Carbon County Flour Mill	Poliet	Carbon	Northern Pacific	125
Farmers Co-operative Assn.	Winifred	Fergus	C. M. & St. Paul	100
Laurel Flour Mill Co.	Laurel	Yellowstone	Northern Pacific	90
Plains Montana Mills.	Plains	Sanders	Northern Pacific	90
Miles City Mill & Elev. Co.	Miles City	Custer	C. M. & St. Paul	85
Beaverhead Mill & Elev. Co.	Billion	Beaverhead	Oregon Short Line	75
Rosebud Milling Co.	Rosebud	Rosebud	Northern Pacific	70
Denton Milling Co.	Denton	Fergus	C. M. & St. Paul	65
Smith-Tyner Co.	Scooby	Damels	Great Northern	65
Hamilton Milling Co.	Hamilton	Ravalli	Northern Pacific	60
Antelope Milling Co.	Antelope	Sheridan	Great Northern	60
Ronan Flour Mill Co.	Ronan	Missoula	Northern Pacific	60
Big Timber Milling Co.	Big Timber	Sweet Grass	Northern Pacific	50
McNamara & Marlow	Big Sandy	Choteau	Great Northern	50
A. B. Andrews	Choteau	Teton	Great Northern and C. M. & St. Paul	50
Milk River Elev. Co.	Chinook	Blaine	Great Northern	50
C. S. Wedge & Son.	Culbertson	Roosevelt	Great Northern	50

Benton Mill and Elev. Co.	Fort Benton	Choteau	Great Northern	50
Glendive Milling Co.	Glendive	Lawson	Northern Pacific	50
Grassrange Milling Co.	Grassrange	C. M. & St. Paul	C. M. & St. Paul	50
Big Horn Milling Co.	Hardin	B. & H. Horn	C. B. & Q. Ry.	50
Havre Mill Co.	Havre	Hill	Great Northern	50
Malta Milling Co.	Malta	Phillips	Great Northern	50
Park City Milling Co.	Park City	Stillwater	Northern Pacific	50
Stanford Roller Mills	Stanford	Fudith Basin	Great Northern	50
John Listervud	Wolf Point	Roosevelt	Great Northern	50
Harrison Milling Co.	Harrison	Madison	Northern Pacific	40
Belt Farmers Mill Co.	Belt	Cascade	Great Northern	25
Pioneer Mills	Chester	Hill	Great Northern	25
Gilford Roller Mills	Gilford	Hill	Great Northern	25
Weldman Milling Co.	Great Falls	Ascade	Great Northern	25
Harlem Milling Co.	Harlem	Blaine	Great Northern	25
Lavina Milling Co.	Lavina	Golden Valley	C. M. & St. Paul	25
Lake Milling Co.	Medicine Lake	Sheridan	Great Northern	25
Plentywood Milling Co.	Plentywood	Sheridan	Great Northern	25
Roundup Milling Co.	Roundup	Musselshell	C. M. & St. Paul	25
Savage Milling Co.	Savage	Richland	Northern Pacific	25
Stevensville Mill Co.	Stevensville	Mayall	Northern Pacific	25
Crane Milling Co.	Crane	Richland	Northern Pacific	12½

Inland Mills. No Railroad Connections

Spring Hill Mill Co.	Spring Hill	Galatin	50
Broadus Mill Co.	Broadus	Powder River	25
Circle Milling Co.	Circle	McCona	25
Mcville Milling Co.	Melville	Sweet Grass	25
Opheim Mill Co.	Opheim	Valley	25
Boyes Milling Co.	Boyes	Carter	15
Parler Milling Co.	Crescon	Flathead	15
Ekalka Milling Co.	Ekalka	Carter	15
Jordan Flour Mill Co.	Jordan	Garfield	15
Ashland Milling Co.	Ashland	Rosebud	12½
Garfield Co. Mill Co.	Sand Springs	Garfield	13

*Rated daily capacity in barrels for 24-hour run.

Grain Elevators Located on Railroads

Name of Railroad	Number of Elevators	Capacity Bushels
Great Northern.....	344	10,934,000
Northern Pacific.....	141	5,993,000
C. M. St. Paul.....	152	5,328,000
Minneapolis, St. Paul & S. Ste, Marie.....	15	429,000
Montana Western.....	9	245,000
C. B. & Q.....	5	128,000
Billings and Central Montana.....	1	40,000
Montana Wyo. & Southern.....	1	30,000
Oregon Short Line.....	1	25,000
W. S. S. & Y. Park.....	2	35,000
Total.....	671	23,162,000

APPENDIX

STANDARD RULES *and* REGULATIONS
for
ALL PUBLIC UTILITIES

GENERAL RULES *and* REGULATIONS *for* WATER SERVICE

Effective April 1, 1916.

Rule G-1. Contracts-Deposit.

The Water Company contracts with owners of property, their authorized agents or with tenants. The Water Company may require a deposit equal to one and one-half the estimated amount of the monthly or billing period bill, as guarantee of payment of same. Application for the use of water must be made at the Water Company office on a printed form furnished for that purpose. Service will be furnished to any consumer who fully and truly sets forth all the purposes for which water may be required and who agrees to and conforms with all rules and regulations governing the service; provided the purposes set forth comply with all the company's rules, and that the system of mains and pipes extends to the point where service is desired, and is adequate to supply the service applied for. Interest will be paid on consumers' deposits at the rate of six per cent per annum, provided such deposits are left with the company for one month or longer. Such interest will cease when the use of water is discontinued.

Rule G-2. Application for Service-Expense.

An application for the introduction of water service to any premises must be signed by the owner of the premises and must be made on the regular form furnished by the company for that purpose. When such an application has been granted, the company at its own expense will tap the main and furnish corporation cock, clamp when necessary, and any other material used or labor furnished in connection with the tapping of the main. All expense of laying and maintaining the service pipes from the mains to the consumers' premises must be borne by the consumer. The service pipe must be laid below street grade and on the consumer's premises, at a standard depth, designated by the company, to prevent freezing. A curb cock of approved pattern with a cast iron curb box must be installed by the consumer at a point designated by the company. Whenever a tap is made through which regular service is not immediately desired, the applicant will bear the entire expense of tapping, subject to a refund whenever regular service is begun.

Rule G-3. Stop Cock.

At some convenient point inside of the building and so located that it cannot freeze, a stop and waste cock must be placed, so that the water can be readily shut off from the building and the water pipes drained to prevent freezing.

Rule G-4. Waste-Shut-offs.

Waste of water is prohibited, and consumers must keep their fixtures and service pipes in good order at their own expense, and all waterways closed when not in use. Leaky fixtures must be repaired at once without waiting for notice from the Water Company, and if not repaired after reasonable notice is given, the water will be shut off by the company.

Rule G-5. Repairs-Permit.

No plumber or other person will be allowed to make connection with any conduit, pipe or other fixture connecting therewith or to connect pipes when they have been disconnected, or to turn water off or on, on any premises without permission from the company.

Rule G-6. Service Pipes-Curb Box.

Service pipes shall be so arranged that the supply of each separate building, house or premises may be controlled by a separate curb cock, placed within or near the line of the street curb, under rules established by the Water Company or civil authorities. This curb cock and box must be kept in repair and easily accessible by the owner of the premises.

Rule G-7. Suspension of Service.

Should the consumer desire to discontinue the use of water temporarily, or should the premises become vacant, the company, when notified to do so in writing, will shut off the water at the curb and allowance will be made on the bill for such time as the water is not in use. No deduction in bills will be made for the time any service pipes may be frozen.

Rule G-8. Emergencies-Shut-offs.

Notice will be given, whenever practicable, prior to shutting off water, but consumers are warned that owing to unavoidable accidents or emergencies their water supply may be shut off at any time.

All persons having boilers on their premises, depending on connected pressure with the water mains, are cautioned against collapse of their boilers. As soon as water is turned off, the hot water faucet should be opened and left open until the water is again turned on. A check valve must

always be placed between the boiler and the Water Company's mains to prevent draining the boiler. Never leave the premises with any faucets open and water turned off.

Rule G-9. Contractors-Permit for Use.

Contractors, builders or owners are required to take out a permit for the use of water for building and other purposes in construction work. Consumers are warned not to allow contractors to use their fixtures unless they produce a permit specifying the premises on which the water is to be used. Water will not be turned on at any new building until all water used during construction has been paid for.

Rule G-10. Lawn Sprinkling.

Permits for lawn sprinkling during each current year must be secured at the office of the company as the supply to any premises, using a hose without a permit, will be shut off without warning. Lawn sprinklers will only be permitted where water is carried into the house also.

Rule G-11. Inspections.

The company's agents or other authorized persons shall have access at reasonable hours to any premises where water is used for the purpose of making inspection or investigation.

Rule G-12. Penalty.

For violation of any of these rules or for non-payment of water rent, for either domestic, sprinkling or other purposes, the company has the right to turn off the water without further notice, and after it has been turned off from any service pipe on account of non-payment or violation of rules, the same shall not be turned on again until back rents are paid, together with the actual cost incurred thereby, not to exceed \$1.00.

Rule G-13. Rules-Effect.

The foregoing general rules shall be effective for all water utilities operating in Montana. The flat rate rules and the meter rate rules shall be effective for all water utilities having schedules of that nature.

This rule, however, shall not be construed to mean that any utility must have both flat rates and meter rates. A utility may adopt, subject to the approval of the Public Service Commission, either a flat rate or meter rate schedule, or both.

In addition to the general flat rate and meter rate rules, a utility may adopt, subject to the approval of the Public Service Commission, other rules to be designated as special rules, to fit local conditions. In case of any apparent conflict in rules, the general rules shall govern.

Rule G-14. Service-Interruption.

Any temporary failure on the part of the company to supply service by reason of accident or otherwise shall not render the company liable beyond a pro rata abatement of service charges during such interruption.

FLAT RATE SERVICE.**Rule F-1. Flat Rates.**

The flat rate will cover the use of water for domestic uses, lawn sprinkling and any other purposes enumerated on the rate sheet covering flat rate services. The company agrees to furnish water for certain specified uses for a certain specified sum. If, therefore, a consumer furnishes other people with water without permission from the company or uses it for other purposes than those he is paying for, it is a violation of his contract and the consumer offending, after reasonable notice, may have his water shut off and service discontinued until such time as the additional service furnished has been paid for, together with the actual additional expense incurred in shutting off and turning on water, not to exceed \$1.00.

Rule F-2. When Payable.

Flat rate water rents are payable monthly in advance and payments should be made at the company's office before the 10th of each month. If not paid before the 15th day of the month, the right is reserved to discontinue the service after reasonable notice.

Rule F-3. Change of Use.

Should any consumer on a flat rate schedule wish to install additional fixtures or should he desire to apply the water to purposes not stated in the original application, written notice must be given the company prior to make such installation or change of use. Special extension permits are issued for any extension of pipes within a building. In case a consumer places new fixtures on his premises without securing an extension permit from the company, when such fixtures are discovered, a charge will be made for such extra fixtures at schedule rates for the full length of time such fixtures have been installed.

Rule F-4.;Discontinuance.

Should it be desired to discontinue the use of water for any special purpose, whether for bath tubs, closets, lawn sprinklers, hose connections, or other fixtures, the faucet must be removed, the branch pipe plugged and notice given the company at its office before any reduction of rates will be made.

METERED SERVICE.

Rule M-1. Meter Rates.

Meter rates will apply to all services not covered by the accompanying flat rate schedule. Any consumer desiring to receive water by meter measurement may have meter placed by the company under the following rules and regulations. Meters may be installed on any service when the same becomes necessary to prevent waste of water. Meters are owned by the company and are furnished to consumers and set in place, provided proper receptacles are provided for them.

Rule M-2. Minimum Charge.

Each metered consumer is subject to the minimum charge for such class of service as he receives. Minima and rates for additional water are shown on accompanying schedule of meter rates.

Rule M-3. Protection of Meter.

In all cases where a meter is installed the consumer must furnish proper protection from frost or other damage, and meter must be located where it is easily accessible for reading purposes and repairs. Where necessary for protection a standard form of meter box will be placed by the company. The actual cost of same shall be paid by the consumer. After such receptacle is placed the company will furnish and connect the meter, and maintain the same in good condition.

Rule M-4. Meter Installation.

When a meter is installed at the request of a consumer its installation is to be permanent unless the consumer elects to have same removed and pays all expenses incident to the installation and removal of same, or discontinues service entirely. Service on a meter for a shorter period than six months will be considered temporary and in such cases the consumer will be required to reimburse the company for the actual cost of the labor in connection with the installation and removal of the meter.

Rule M-5. Number of Meters.

One meter only will be supplied for a single service, and in case a consumer desires one or more secondary meters for various tenants in a single building, the consumer will be required to pay \$1.00 a month, for the installation and maintenance, including the monthly reading of such secondary meters. The company will not make collections for any secondary meters, and all water rents of any single building must be paid by one consumer when supplied by meter measurement from one service. The company, however, will inclose the readings of secondary meters with the bill for the whole building.

Rule M-6. Replacement of meters.

The company may replace any meter at such time as it may see fit and shall be the judge of the size and make of any meter installed. In case of a dispute as to the accuracy of a meter, the consumer, upon depositing the estimated cost of making a test, may demand that the meter be removed, and tested as to accuracy, in his presence. In case the meter is found to be registering correctly or in favor of the consumer, the cost of such testing and replacing of the meter shall be borne by the consumer.

In case the meter is found to be recording incorrectly and against the consumer, the amount deposited by the consumer will be refunded and a reasonable adjustment made for overcharges, for a period not exceeding sixty days previous to the demand of the consumer for a test to be made.

Rule M-7. Defective Meter.

In case a meter is found stopped for any reason, so that it is not correctly recording the consumption of water, the company may average the amount due for the current month, using the past two months as a basis of such average.

Rule M-8. Disturbance of Meter.

Water consumers are not permitted to interfere in any way with the meter after it is set in place. In case the meter seal is broken or the working parts of the meter have been tampered with or the meter damaged, the company may render a bill for the current month, based on an average of the last two months, together with the full cost of such damage as has been done to the meter, and may refuse to furnish water until account is paid in full.

Rule M-9. Houses-Separate Meters.

In no case will the company furnish water from one meter to two or more houses, whether the same are owned by one person or not.

RULES *and* REGULATIONS
for
GAS SERVICE

RULES AND REGULATIONS PRESCRIBING
STANDARDS FOR GAS SERVICE
PROVIDING FOR THE TESTING OF GAS METERS
AND OTHERWISE REGULATING THE
SERVICE OF GAS UTILITIES.

Adopted, December 5, 1920; Effective, January 3, 1921.

Both the direct mandates of the statute and variations in standards of service in the different cities of Montana make it necessary for this Commission to adopt uniform standards of service for public utilities. Rules for gas service were first adopted by the Commission on April 30th, 1914, a set of nine short rules which served their purpose for the time being, but the time has now come when the Commission is compelled to adopt additional regulations consistent with present-day practice and conforming with those of other public service commissions.

The preliminary investigations, preceding the adoption of these standards, extend over a considerable period of time and include a study of the standards in effect in other states, the tentative rules prepared by the U. S. Bureau of Standards, and the operating conditions in this state. The fixing of the most satisfactory heating value standards for manufactured gas is a task that requires careful study and expert judgement. Economic conditions, practical manufacturing considerations, and maximum satisfaction to the consumer are a few of the determining factors.

At first it would appear that the fixing of standards for water gas and coal gas would be quite different problems—and two plants in the state manufacture both. It would seem that the question would be further complicated when it is considered that four of the Montana plants deal in natural gas only. The Commission feels, however, that there are certain advantages in having all plants operate under a single set of standards; the rules in general are therefore designed to apply to all, with certain modifications in the case of natural gas companies where the quality of the gas is constant and periodic tests as to heating value are unnecessary.

In order to avoid working a hardship on any plant now operating, we have provided that for sufficient reasons, such modifications, exemptions and concessions may be made in the rules as the facts in each case may warrant. The burden of proof in each case rests with the utility; without an express order of the Commission in each instance, every departure from the rules and regulations will be regarded as a violation of the law. A reasonable time will be granted for gas companies to install the equipment required and to make such changes as may be necessary to comply.

Rule 1. Authorization of Rules.

(a) The Public Service Law of the State of Montana provides that the Public Service Commission shall be empowered to establish rules and fix standards for gas service as follows:

Sec. 10 (b), Chapter 52, Session Laws, 1913, provides:

"The Commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of products or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product of service and for the measurement thereof."

In accordance with the above provisions the Public Service Commission has adopted the following rules and fixed the standards for gas service, effective the third day of January, 1921. All previous rules or standards conflicting with those contained herein are hereby superseded.

(b) The adoption of these rules shall in no way preclude the Public Service Commission from altering or amending them in whole or in part or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any utility. Furthermore, these rules shall not in any way relieve any utility from any of its duties under the laws of this state.

Rule 2. Application of Rules.

(a) These rules shall apply to any person, firm or corporation which is now or may hereafter become engaged as a public utility in the business of furnishing gas to domestic or commercial consumers within the State of Montana.

(b) The rules are intended to define good practice which can normally be expected. They are intended to insure adequate service and prevent unfair charges to the public, and to protect the utilities from unreasonable demands. The co-operation of the utilities with the Commission is presupposed.

(c) In any case where compliance with any of these rules introduces unusual difficulty, such rule may be temporarily waived by the Commission upon application of the utility. If in such case compliance with the rule would cost more than the results of such compliance are worth to the public and gas consumers it may be permanently set aside by the Commission.

Rule 3. Definition.

In the interpretation of these rules the word "Commission" shall be taken to mean the Public Service Commission of Montana; the word "utility" shall be taken to mean any corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, engaged in the business of supplying gas to domestic, commercial or industrial users within this State; and the word "consumer" shall be taken to mean any person, firm, corporation, municipality, or other political subdivision of the State supplied by any such utility.

RECORDS AND REPORTS.**Rule 4. Records.**

(a) A complete record shall be kept of all tests and inspections made under these rules as to the quality or condition of service which it renders.

(b) All records of all tests shall contain complete information concerning the test, including the date, hour and place where the test was made, the name of the person making the test, and the result.

All records required by these rules shall be preserved by the utility for at least two years after they are made. Such records shall be kept within the State, at the office or offices of the utility, and shall be open for examination by the Commission or its representatives at all reasonable hours.

Rule 5. Reports to Commission.

Each utility shall, at such times and in such form as the Commission may prescribe, report to the Commission the results of any test or tests required to be made or the information contained in any records required to be kept by the utility.

GENERAL SERVICE PROVISIONS.**Rule 6. Inspection of Plant and Equipment.**

(a) Each utility shall inspect its plant, distribution system, and facilities in such manner and with such frequency as may be necessary to maintain them in proper condition for use in rendering safe, adequate and continuous service. Such record shall be kept of the conditions found as the utility itself shall consider necessary for the proper maintenance of its system, unless in special cases a more complete record be specified by the Commission.

(b) Each utility shall upon request of the Commission file a statement regarding the condition and adequacy of

its plant, equipment, facilities, and service in such form as the Commission may require.

Rule 7. Interruptions of Service.

Each utility shall keep a record of any condition resulting in an interruption of service affecting its entire system or major division thereof, including a statement of the time, duration and cause of such interruption.

Rule 8. Accidents.

Each utility shall as soon as possible report to the Commission by telegraph each accident happening in connection with the operation of its property, where it is necessary to suspend service for a period exceeding twenty-four hours.

Rule 9. Complaints.

Each utility shall make a full and prompt investigation of all service complaints made to it by its consumers, either directly or through the Commission. It shall keep a record of all such complaints received, which record shall show the name and address of the complainant, the date and character of the complaint, and the adjustment or disposal made thereof.

Rule 10. Information for Consumers.

(a) Each utility shall, upon request, give its consumers such information and assistance as is reasonable, in order that consumers may secure safe and efficient service; and upon request it shall render every reasonable assistance in securing appliances properly adapted and adjusted to the service furnished.

(b) Each utility shall adopt some means of informing its consumers as to the method of reading meters, either by printing on its bills a description of the method of reading meters, by a special card with diagrams illustrating the method or by notice to the effect that the method will be explained at the office of the utility upon application. It is recommended that an exhibition meter be kept on display in the main office for the instruction of consumers.

Rule 11. Meter Readings and Bill Forms.

(a) Each service meter shall indicate clearly the cubic feet of gas registered by such meter. Where gas is metered under high pressure or where the quantity is determined by calculation from recording devices, the utility shall supply the consumer with such information as will make clear the method by which the quantity is determined.

(b) Bills shall be rendered periodically, and they shall show the readings of the meter at the beginning and end of the period for which the bill is rendered, the date of the

meter readings, the number of cubic feet of gas supplied and the unit price. On all bills which include any other items than a definite unit price for gas, the other factors used in computing the bill shall be clearly stated, so that the amount may be readily recomputed from the information appearing upon the bill. Each bill shall bear upon its face the latest date on which it may be paid without loss of discount.

Rule 12. Change in Character of Service.

In case any substantial change is made by the utility in the gas pressure or other service conditions which would affect efficiency of operation or adjustment of appliances, the appliances of all consumers in the district affected shall be readjusted by the utility for the new conditions without charge.

TESTING.

Rule 13. Definition of a Cubic Foot of Gas.

When the gas itself is to be tested under these rules, a cubic foot of gas shall be taken to be that amount of gas which occupies the volume of one cubic foot when saturated with water vapor and at sixty degrees Fahrenheit and under a pressure of thirty inches of mercury. For purpose of measurement of gas to a consumer a cubic foot of gas shall be taken to be the amount of gas which occupies a volume of one cubic foot under the conditions existing in such consumer's meter as and where installed.

Rule 14. Testing Facilities.

(a) Each utility shall, unless specifically excused by the Commission, provide such laboratory, meter-testing equipment and other equipment and facilities as may be necessary to make the tests required of it by these rules or other orders of the Commission. The apparatus and equipment so provided shall be subject to the approval of the Commission, and it shall be available at all times for the inspection or use of any member or authorized representative of the Commission.

(b) Each utility shall make such tests as are prescribed under these rules with such frequency and in such manner and at such places as is herein provided or as may be approved or ordered by the Commission. Unless otherwise directed by the Commission the methods and apparatus recommended by the National Bureau of Standards in the latest edition of its Circular No. 48. "Standard Methods of Gas Testing," may be used.

METER ACCURACY AND TESTING.

Rule 15. Meter Prover.

Each utility furnishing metered gas service shall own an approved type of meter prover, preferably of not less than five cubic feet capacity, equipped with suitable thermometers and other necessary accessories and it shall maintain such equipment in proper adjustment so that it shall be capable of determining the accuracy of any service meter to within one-half of one per cent. Each such meter prover shall be so placed that it will not be subjected to drafts or excessive temperature variations.

Rule 16. Gas Meter Accuracy.

(a) **Installation Test.** Every gas service meter, whether new, repaired, or removed from the service for any cause, shall be in good order and shall be adjusted to be correct to within one per cent when passing gas at six cubic feet per hour per rated light capacity before being installed for the use of any consumer. Provided, however, that a utility which has less than one thousand consumers and which has no facilities for opening meter cases and adjusting the mechanism may put a meter back into service if it is not found to be in error by more than one and one-half per cent and appears otherwise to be in good order.

(b) **Method of Testing.** All tests to determine the accuracy of registration of any gas service meter shall be made with a suitable meter prover. Each meter shall be marked with the date of the last test made on that meter.

(c) **Special Meters.** Any meter, the readings or record of which are based on the differential pressure in such meter or upon the measurement of any portion of the total gas delivered to a consumer, shall be tested for accuracy before installation in a manner satisfactory to the Commission.

Rule 17. Record of Meters and Meter Tests.

(a) Whenever any gas service meter is tested the original test record shall be preserved, including the information necessary for identifying the meter, the reason for making the test, the reading of the meter upon removal from service, and the result of the test together with all data taken at the time of the test in sufficiently complete form to permit the convenient checking of the methods employed and the calculations.

(b) A record shall also be kept numerically arranged, indicating for each meter owned or used by any utility the date of purchase, its identification, a record of the use, repairs, and tests to which it has been subjected, and its present location.

Rule 18. Prepayment Meters.

No utility shall use prepayment meters geared or set so as to cause a rate or amount higher than would be paid if a standard type meter were used, except under such special rate schedule as may be approved by the Commission for this class of service.

Rule 19. Location of Meters.

No consumer's meter shall be installed in any location where it may be unreasonably exposed to heat, cold, dampness, or other cause of damage or in any unduly dirty or inaccessible location.

Rule 20. Periodic Testing of Meters.

(a) No gas service meter hereafter installed shall be allowed to remain in service more than five years from the time when last tested.

(b) During each period of twelve months after these rules take effect, until all meters now in service shall have been tested, each utility shall remove approximately twenty per cent of all meters now in service, those longest in service being removed first. Such meters shall not be replaced in service until tested and made to comply with the other provisions of these rules.

Rule 21. Meter Testing on Request of Consumers.

(a) Each utility shall, at any time when requested in writing by a consumer upon reasonable notice, test the accuracy of the meter in use by him; provided the consumer will agree to accept the result of the test made by the utility as determining the basis for settling the difference claimed.

No deposit or payment shall be required from the consumer for such meter test except when a consumer whose average monthly bill for gas service is less than \$25, requests a meter test within six (6) months after the date of the installation or of the last previous test of this meter, in which case he shall be required by the utility to deposit with it, to cover the reasonable cost of such test, an amount not to exceed the following:

For each standard type gas service meter not exceeding 10 lights capacity	\$2.00
Exceeding 10 lights but not exceeding 45 lights capacity	3.00
Exceeding 45 lights capacity	4.00

For any meter rates other than by lights capacity, including increased capacity meters commonly called "A" and "B" meters, the deposit shall be the same amount as is required for a meter of corresponding size rated by its lights capacity.

The amount so deposited with the utility shall be refunded or credited to the consumer, as a part of the settlement of the disputed account if the meter is found when tested to register more than two per cent fast; otherwise the deposit shall be retained by the utility.

(b) A consumer may be present when the utility conducts the test on his meter or, if he desires, may send an expert or other representative appointed by him.

(c) A report giving the name of the consumer requesting the test, the date of the request, the location of the premises where the meter has been installed, the type, make, size, and serial number of the meter, the date of removal, the date tested, and the result of the test, shall be supplied to such consumer within a reasonable time after the completion of the test.

Rule 22. Referee Meter Tests by Commission.

(a) Upon written application to the Commission by a consumer a test will be made of the consumer's meter as soon as practicable by a representative of the Commission. The application for such test shall be accompanied by a remittance of the amount fixed below as the fee for such test. This fee shall be retained by the Commission. However, if the meter is found to be more than two per cent fast the utility shall repay to the consumer the amount for such meter test.

(b) The amount of the fee to be paid for a meter test made by the Commission shall be as follows:

For each gas service meter not exceeding 10 lights capacity	\$4.00
Exceeding 10 lights but not exceeding 45 lights capacity	5.00
Exceeding 45 lights capacity	10.00

For any meter rates other than by lights capacity (including increased capacity meters commonly called "A" and "B" meters) the fee shall be the same amount as is required for a meter of corresponding size rates by its lights capacity.

(c) This rule shall not interfere with the practice of a utility with reference to its tests of gas service meters, except that in the event of an application by a consumer to the Commission for a referee test as herein provided, the utility shall not knowingly remove, interfere with, or adjust the meter to be tested without the written consent of the consumer and approved by the Commission.

Rule 23. Adjustment of Bills for Meter Error.

(a) **Fast Meters.** If on test of any gas service meter made by the Commission or the utility at the request of a consumer it be found more than two per cent fast, the utility shall refund to the consumer such percentage of the amount of his bills for the period of six months just previous to the removal of such meter from service—or for the time the meter was in service, not exceeding six months—as the meter shall have been shown to be in error by such test. **Provided, however,** that if the error was due to some cause, the date of which can be fixed, the overcharge shall be computed back to, but not beyond, such time. No part of any minimum service charge shall be refunded.

(b) **Slow Meters.** If on test of any gas service meter made by the Commission or the utility at the request of a consumer it be found more than two per cent slow, the utility may collect from the consumer the amount estimated to be due from the consumer for gas used but not charged for in bills rendered for not to exceed the six months previous to the removal of the meter.

(c) Each utility shall file with the Commission a statement setting forth its practice with respect to refunds and collections from consumers when upon test other than at the request of the consumer the meter is found to be fast or slow in excess of two per cent.

HEATING VALUE REQUIREMENTS AND TESTS.***Rule 24. Calorimeter Equipment and Laboratory.**

(a) Each utility selling more than ten million cubic feet of manufactured gas per year shall provide and maintain a calorimeter of a type approved by the Commission and all necessary accessories therefor.†

(b) The calorimeter equipment shall be installed in a suitable located testing station, in or adjoining the company's main office. The location of such testing station shall be selected by the utility and approved by the Commission.

(c) The accuracy of all calorimeters as well as the method of making heating-value tests, shall be subject to the determination and approval of a representative of the Commission.

Rule 25. Heating Value Tests.

(a) Each utility maintaining a calorimeter testing station shall there determine the heating value of the gas supplied to its consumers at least three days each week.

*This section does not apply to utilities selling natural gas.

†Utilities not required to purchase calorimeters are nevertheless advised to do so as the improved operating efficiencies obtainable will usually more than pay for the cost of the apparatus.

(b) Each utility making heating-value determinations shall adopt, subject to the approval of the Commission, a standard form for recording the results of each such test. Each determination of heating-value shall be recorded originally upon the form adopted for that purpose and such forms shall be retained as a permanent record.

Rule 26. Heating Value Requirements.

(a) **Average Requirement.** Each utility supplying manufactured gas shall maintain the monthly average total heating value of such gas at any point within one mile of the manufacturing plant at not less than 475 British thermal units per cubic foot. **Provided, however,** that in the case of gas produced by the by-product coke-oven process or in case of other good and sufficient reason any utility finds it impracticable or uneconomical to manufacture gas of the heating value aforesaid, it shall file a statement with the Commission clearly setting forth all pertinent facts, and the Commission after investigation may by special order fix such lower average heating value standard as may by them be deemed proper for said utility.

To obtain the monthly average total heating value of a gas the results of all tests of heating value made on any day during the calendar month shall be averaged, and the average of all such daily averages shall be taken as the monthly average.

(b) **Maximum and Minimum Limits.** The heating value of the gas shall be maintained with as little deviation as practicable; and to this end the average total heating value on any one day should not exceed or fall below by more than thirty British thermal units the monthly average standard herein fixed, or otherwise fixed by special order of the Commission for a particular utility.

(c) Where manufactured gas is delivered to the mains under a pressure in excess of five pounds per square inch, the heating value may be determined before compression.

PURITY REQUIREMENTS AND TESTS.*

Rule 27. Purity Requirements.

(a) **Hydrogen Sulphide.** All manufactured gas distributed in this state shall not contain more than a trace of hydrogen sulphide. The gas shall be considered to contain not more than a trace of hydrogen sulphide if a strip of white filter paper moistened with a solution containing five per cent by weight of lead acetate is not distinctly

NOTE: Any statement published by the utility as to the average heating value of the gas supplied should indicate that it was measured under standard conditions, i. e., at 60° F., and under a pressure of 30 inches of mercury.

*This section does not apply to utilities selling natural gas.

darker than a second paper freshly moistened with the same solution after the first paper has been exposed to the gas for one minute in an apparatus of approved form through which the gas is flowing at the rate of approximately five cubic feet per hour, the gas not impinging directly from a jet upon the test paper.

(b) **Total Sulphur.** All manufactured gas distributed in this State shall contain in each one hundred cubic feet not more than thirty grains of total sulphur.

(c) **Ammonia.** All manufactured gas distributed in this State shall contain in each one hundred cubic feet not more than five grains of ammonia.

Rule 28. Tests of Purity.

Each utility supplying manufactured gas shall daily test the gas leaving its holders for the presence of hydrogen sulphide in the manner above specified.

Each utility selling more than one hundred million cubic feet of manufactured gas per year shall provide and maintain such apparatus and facilities as are necessary for the determination of total sulphur and ammonia in the gas; and each such utility shall periodically (preferably semi-monthly) determine the amount of total sulphur and ammonia in the gas distributed by it and shall keep a record of the results of all such tests, as provided for in Rule 4. **Provided, however,** that any such utility supplying only water gas or oil gas or mixtures of these, shall not be required to provide apparatus for or make determinations of the amount of ammonia in the gas.

GAS PRESSURE REQUIREMENTS.

Rule 29. Gas Pressure Limits and Allowable Variation.

(a) **Maximum and Minimum Limits.** The pressure of gas supplied by any utility, as measured at the outlet of the utility's service pipe to any consumer, or in the case of high pressure systems at the outlet of the house governor, should be maintained as uniform as practicable and it should never be less than two inches nor more than eight inches of water pressure except as the consumer may request in writing the maintenance of some higher pressure.

(b) **Allowable Variation.** Between the hours of 6 a. m. and 10 p. m., the pressure of the gas at the outlet of the utility's service pipe, or house governor, to any consumer shall never vary more than the following amounts, viz.:

Minimum Pressure Maintained	Maximum Pressure Variation Permissible
2 to 3 inches	2 inches
3 to 4 inches	2½ inches
over 4 inches	3 inches

(c) No utility shall be deemed to have violated the preceding paragraph of this rule if it can be shown to the satisfaction of the Commission that the variations, in gas pressure occurring, were due to unforeseen demand or to temporary conditions beyond the control of the utility.

Rule 30. Pressure Testing Equipment.

(a) Each utility shall maintain on its distribution system at least two recording pressure gauges, of which one should be portable.

(b) Each utility shall regularly make records with such recording gauges of the pressures in various parts of its distribution system. The charts or records thus obtained shall bear the date and place where the pressure was taken and shall be filed as a permanent record.

PUBLIC RELATIONS.

Rule 31. Deposits from Consumers to Guarantee Payment of Bills.

(a) Each utility may require from any consumer or prospective consumer a deposit intended to guarantee payment of current bills. Such required deposit shall not exceed the amount of an estimated forty-five days' bill of such consumer, provided, however, that no deposit shall be required of the owner of the property served with gas. Interest shall be paid by the utility upon such deposits at the rate of six per cent per annum, payable annually, for the time such deposit was held by the utility and the consumer was served by the utility, provided such period was not less than six months.

(b) Each utility receiving deposits from consumers shall keep a Consumers' Deposit Book showing: (1) the name of each consumer making such deposit, (2) the premises occupied by the consumer when the deposit was made, (3) the amount and date of making the deposit, and (4) a record of each transaction concerning such deposit such as payment of interest and interest credited.

(c) Each utility shall issue to every consumer from whom a deposit is received a non-assignable receipt.

(d) Each utility shall provide reasonable ways and means whereby a depositor who makes application for the return of his deposit or any balance to which he is en-

titled, but is unable to produce the original certificate of deposit or receipt, may not be deprived of his deposit or balance.

Rule 32. Discontinuance of Service for Violation of Rules or Non-Payment of Bills.

(a) No utility shall discontinue the service to any consumer for violation of its rules or regulations, or for non-payment of bills, without first having diligently tried to induce the consumer to comply with its rules and regulations or to pay his bills. Service shall actually be discontinued only after at least twenty-four hours' written notice of such intention shall have been given to the consumer by the utility. **Provided, however,** that where fraudulent use of gas is detected, or where a dangerous condition is found to exist on the consumer's premises the gas may be shut off without notice in advance.

(b) Whenever the supply of gas is turned off for violation of rules or regulations, non-payment of bill, or, fraudulent use of gas, the utility may make a reasonable charge for the cost to it of turning the gas on again such charge not to exceed actual cost.

Rule 33. Replacement of Meters and Changes in Location of Service.

(a) Whenever a consumer requests the replacement of the service meter on his premises, such requests shall be treated as a request for the test of such meter, and as such shall fall under the provisions of Rule 20.

(b) Whenever a consumer moves from the location where gas is used by him and thereby requires the disconnecting and connecting at a new location of the gas supply, and the same work has been done for him within one year preceding, the utility may make a charge for the work based on actual cost.

Rule 34. Extent of System in Which Utility Must Maintain Service.

Each gas utility, unless specifically relieved in any case by the Commission from such obligation, shall operate and maintain in safe, efficient, and proper conditions all of the facilities and instrumentalities used in connection with the regulation, measurement and delivery of gas to any consumer up to and including the point of delivery into the piping owned by the consumer.

Rule 35. Maps.

Suitable maps or records shall be kept on file showing the size, character, and location of each street main, dis-

strict regulator, street valve, and drip.

Rule 36. Extension of Mains.

(a) Definitions. For the purpose of this rule a high pressure system shall be taken to mean one in which the gas is carried at a pressure of two pounds or over per square inch to the consumer's premises where a service governor is installed to obtain a reduced pressure on such premises. A low pressure system shall mean a system in which the consumer's service is connected to a main carrying less than two pounds per square inch pressure.

(b) Free Extensions. Each utility shall upon written request for service by a prospective consumer or a group of prospective consumers located in the same neighborhood, make free of charge a line extension necessary to give service and furnish free service connection when the estimated income for the first year from the prospective consumer or consumers is equal to one-third (1-3) the direct cost of the extension.

(c) Extension Above Free Limit. If the line extension required in order to furnish service at any point within the corporate limits of any city or village, or for any adjacent suburb of a city or village, is greater than the free extension specified above, such an extension shall be made under the following conditions: The utility may require a deposit of the cost of the extension above the free limit and shall, in such a case, refund an amount equal to the cost of the free main extension per consumer for each additional consumer whose service shall be taken off of the entire extension within a period of ten years from the making of such an extension, but at no time shall the rebate made exceed the original deposit. If the extension is of such length and the prospective business which may be developed by it is so meager as to make it doubtful whether the business from the extension would ever pay a fair return on the investment, the facts shall be reported to the Commission for investigation and determination as to the reasonableness of such extension. If at any time the utility desires to purchase an extension to its distribution system which was built in whole or in part by the consumer or consumers, it may do so, subject to the approval of the Commission, after making payment of a fair and reasonable price fixed by the Commission, due allowance being made for depreciation and previous payments made thereon.

(d) In estimating the cost of an extension the estimate shall be based on the diameter of the pipe to be used, provided, however, the estimated cost to the consumer or consumers shall not be based on a pipe diameter in excess of

four inches except where a larger pipe is required for the adequate supply of these consumers.

(e) This rule shall not be construed as prohibiting any utility from making free extensions of lengths greater than above specified, or from providing a method of return of deposits for extensions more favorable to consumers, so long as no discrimination is practiced between consumers whose service requirements are similar.

(f) Contract for Service. Utilities will not be required to make line extensions as described in this rule unless those to be served by such extensions shall contract to use the service for at least two years.

Rule 37. Rate Schedules, Rules and Regulations.

(a) Copies of all schedules of rates of service, form of contracts, charges for service connections and extensions of mains, and of all rules and regulations covering the relations of consumer and utility shall be filed by each utility in the office of the Commission. Complete schedules, contract forms, rules and regulations, etc., as filed with the Commission shall also be on file in the local office of the utility and shall be open to the inspection of the public.

(b) It is recommended that a copy of the rules and regulations for gas service as published and furnished by the Public Service Commission should be on file in the office of each utility and open to inspection by the public.

(c) It is recommended that the attention of the public be called to these files of schedules, rules and regulations, by placing a suitable placard in the office of the utility.

This order shall become effective on January 3rd, 1921.

BAKER.

Population of territory supplied—1,067.

Montana Petroleum Company

Production—Natural Gas.

Analysis—Oxygen	0.1
Methane	93.9
Nitrogen	5.7

100.0

Heat Value	1019 B. T. U. per cu. ft.
Sales—1919, Retail Consumers	70,238,000 cu. ft.
Gas Products Company	561,363,000 cu. ft.
Total	631,601,000 cu ft.
Commercial Consumers, Dec. 31, 1920	300
Power Gas Consumers	1
	301

MONTANA UTILITIES REPORTS

Schedule of Rates

First	5,000	cu. ft.	.....	44c	per 1,000	cu. ft.
Next	15,000	cu. ft.	.....	38½c	per 1,000	cu. ft.
Next	40,000	cu. ft.	.....	33c	per 1,000	cu. ft.
Next	40,000	cu. ft.	.....	27½c	per 1,000	cu. ft.
Next	100,000	cu. ft.	.....	25c	per 1,000	cu. ft.
Next	150,000	cu. ft.	.....	22c	per 1,000	cu. ft.
Next	300,000	cu. ft.	.....	19c	per 1,000	cu. ft.
Next	400,000	cu. ft.	.....	16½c	per 1,000	cu. ft.
All additional	cu. ft.		.....	14c	per 1,000	cu. ft.

Minimum charge, 75c per month.

Discount, 10% if bill paid on or before 10th day of month.

BILLINGS

Population of territory supplied—15,100.

Billings Gas Company

Production—Water Gas. (Now Natural Gas.)

Statistics—1920

Water Gas made during the year	.....	64,579,588	cu. ft.
Gas sold	.....	63,549,900	
Gas used by company	.....	84,500	
Gas used and sold	.....	63,634,400	cu. ft.
Gas unaccounted for	.....	945,148	cu. ft.
		or 1.46%	

Consumers

Commercial	.....	2,032
Industrial	.....	125
Power Gas	.....	1
Total	.....	2,158

Schedule of Rates (For Manufactured Gas)

Commercial

First	3,000	cu. ft.	.....	\$1.95	per 1,000	cu. ft.
Next	2,000	cu. ft.	.....	1.75	per 1,000	cu. ft.
Next	10,000	cu. ft.	.....	1.65	per 1,000	cu. ft.
Next	15,000	cu. ft.	.....	1.50	per 1,000	cu. ft.
Over	30,000	cu. ft.	.....	1.30	per 1,000	cu. ft.

Minimum charge, 75c per month.

Discount 10c per 1,000 cu. ft. of gas used if bill paid on or before 10th day of month.

Industrial

(Heating, Power and Combination Heating and Light Rates).

First	5,000	cu. ft.	.....	\$1.60	per 1,000	cu. ft.
Next	10,000	cu. ft.	.....	1.50	per 1,000	cu. ft.
Next	15,000	cu. ft.	.....	1.40	per 1,000	cu. ft.
Next	30,000	cu. ft.	.....	1.30	per 1,000	cu. ft.
Next	40,000	cu. ft.	.....	1.25	per 1,000	cu. ft.
Over	100,000	cu. ft.	.....	1.20	per 1,000	cu. ft.

Minimum charge, \$1.00 per month.

Discount 10c per 1,000 cu. ft. of gas used if bill paid on or before 10th day of the month.

BUTTE

Population of territory supplied—41,611.

Gas Department—Montana Power Co.

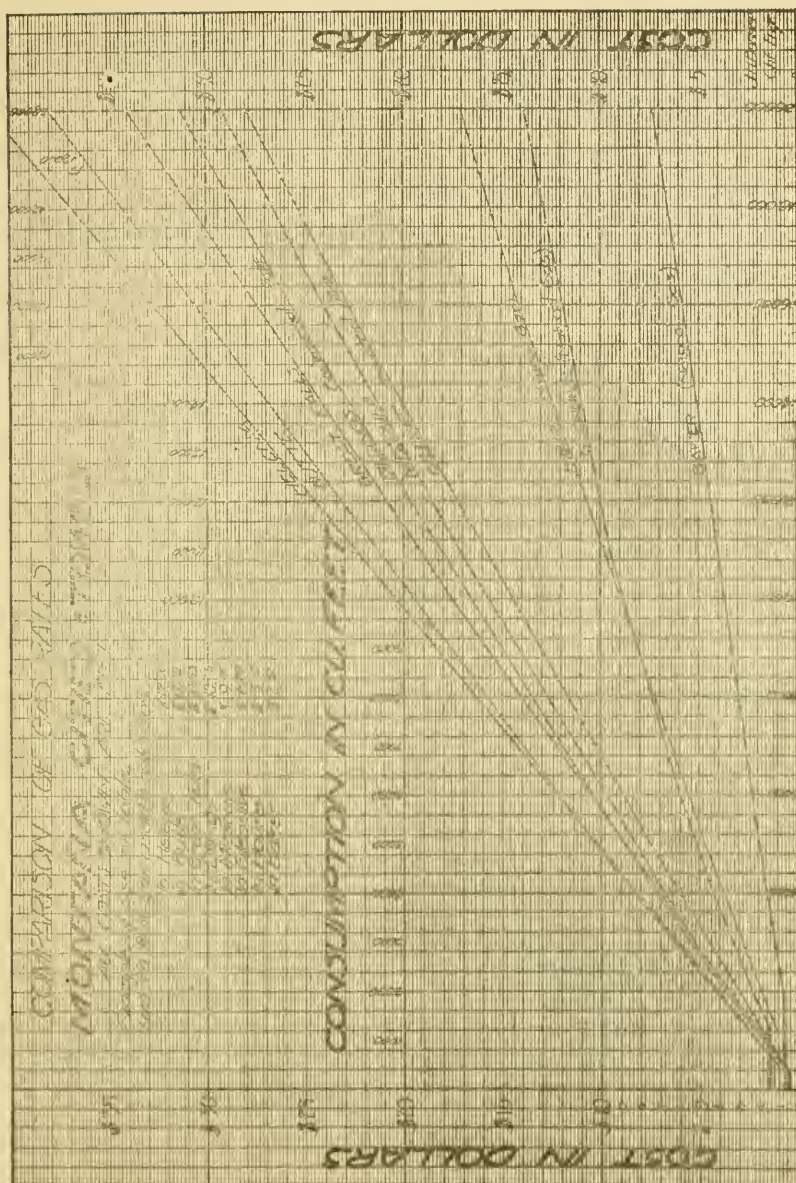
Production—Coal Gas.

Statistics—1920

Coal Gas made	.....	96,915,000	cu. ft.
Gas sold	.....	76,842,200	
Gas used by company	.....	75,900	
Total Gas used and sold	.....	76,918,100	
Gas unaccounted for	.....	20,010,900	
		or 20.6%	

Consumers

Commercial	.....	2,876
Industrial	.....	276
Total	.....	3,152



MONTANA UTILITIES REPORTS

Rates

First	4,000 cu. ft.	\$2.20 per 1,000 cu. ft.
Next	16,000 cu. ft.	1.95 per 1,000 cu. ft.
Over	20,000 cu. ft.	1.70 per 1,000 cu. ft.

Minimum charge, \$1.25 per month.

Discount, 10c per 1,000 cu. ft. of gas used if bill paid within ten days of date thereon.

GLENDALE

Population of territory supplied—3,816.

Eastern Montana Oil and Gas Company

Production—Natural Gas.

Analysis—No detailed analysis available but source of supply is from same anticline as Baker supply. Gas said to contain over 95% methane.

Heat Value—Not known.

Sales, 1920—Not reported.

Consumers—440, 1919—No report for 1920.

Schedule of Rates

First	2,000 cu. ft.	\$1.25 per 1,000 cu. ft.
Next	2,000 cu. ft.	1.00 per 1,000 cu. ft.
Next	2,000 cu. ft.	.90 per 1,000 cu. ft.
Next	4,000 cu. ft.	.75 per 1,000 cu. ft.
Over	10,000 cu. ft.	.50 per 1,000 cu. ft.

Minimum charge, \$1.50 per month.

Discount, 5% if bill paid on or before the 10th day of month.

GREAT FALLS

Population of territory supplied—24,121.

Great Falls Gas Company

Production—Coal and Water Gas.

Statistics—1920

Coal Gas Made	25,555,800 cu. ft.
Water Gas Made	45,000,700 cu. ft.
Total	70,556,500 cu. ft.
Gas sold	61,361,800 cu. ft.
Gas used by company	1,200,000 cu. ft.
Total	62,561,800 cu. ft.
Gas unaccounted for	7,963,000 cu. ft.
	or 11.3%

Consumers

Commercial	3,168
Industrial	68
Total	3,236

Rates

(Note: Application now pending for rate increase)

First	10,000 cu. ft.	\$1.95 per 1,000 cu. ft.
Next	10,000 cu. ft.	1.75 per 1,000 cu. ft.
Next	30,000 cu. ft.	1.55 per 1,000 cu. ft.
Over	50,000 cu. ft.	1.30 per 1,000 cu. ft.

Minimum charge, 50c per month.

Discount, 10% on first 10,000 cu. ft. used per month, and 10c per 1,000 cu. ft. on all additional, on bills paid before 10th day of month.

Prepayment meters set at \$1.80 per 1,000 cu. ft.

HAVRE

Population of territory supplied—5,429.

Havre Natural Gas Company

Production—Natural Gas.

Analysis—Carbon Monoxide	0.2
Methane	94.8
Nitrogen	5.0

100.0

Heat Value	.897 B. T. U. per cu. ft.
Gas sold and used during 1920	51,043,000 cu. ft.
Commercial consumers, 1920	495

Schedule of Rates

First 5,000 cu. ft.	\$1.00	per 1,000 cu. ft.
Next 10,000 cu. ft.	.90	per 1,000 cu. ft.
Next 35,000 cu. ft.	.80	per 1,000 cu. ft.
Next 150,000 cu. ft.	.70	per 1,000 cu. ft.
Next 300,000 cu. ft.	.60	per 1,000 cu. ft.
Over 500,000 cu. ft.	.50	per 1,000 cu. ft.

Minimum charge, \$1.00 per month.

Discount, 5% if bill paid on or before the 10th day of month.

HELENA

Population of territory supplied—12,037.

Helena Light and Railway Company

Production—Coal and Water Gas.

Statistics—1920

Coal Gas made	25,446,700 cu. ft.
Water Gas made	10,357,100 cu. ft.
Total Gas made	35,803,800 cu. ft.
Gas sold	28,145,770 cu. ft.
Gas used by company	192,700 cu. ft.
Total used and sold	28,338,470 cu. ft.
Gas unaccounted for	7,444,330 cu. ft.
	20.8%
Commercial consumers	1,708

Rates

All Gas sold\$2.25 per 1,000 cu. ft.

Minimum charge, \$1.00 per month.

Discount, 20c per 1,000 cu. ft. of gas used if bill paid on or before the 10th day of month.

MISSOULA

Population of territory supplied—12,668.

Missoula Gas Company

Production—Coal Gas.

Company in hands of receiver.

Statistics—1920

Coal Gas made during year	26,042,100 cu. ft.
Gas sold	22,615,200 cu. ft.
Gas used by company	900 cu. ft.
Gas used and sold	22,615,200 cu. ft.
Gas unaccounted for	3,421,100 cu. ft.
	or 13.1%
Commercial consumers	1,262

Schedule of Rates

First 3,000 cu. ft.	\$1.85	per 1,000 cu. ft.
Next 7,000 cu. ft.	1.60	per 1,000 cu. ft.
Next 5,000 cu. ft.	1.50	per 1,000 cu. ft.
Next 5,000 cu. ft.	1.40	per 1,000 cu. ft.
Next 5,000 cu. ft.	1.30	per 1,000 cu. ft.
Next 5,000 cu. ft.	1.20	per 1,000 cu. ft.
Next 5,000 cu. ft.	1.10	per 1,000 cu. ft.
Over 35,000 cu. ft.	1.00	per 1,000 cu. ft.

Minimum charge—On consumption of 300 feet or less per month, minimum rate, 60c.

Discount, 10c per 1,000 cu. ft. of gas used if bill paid on or before the 10th day of month.

Discount of 10c on bills where 300 ft. or less is used per month if bill is paid on or before 10th day of month.

RULES *and* REGULATIONS
for
HEATING SERVICE

STANDARDS *for* HEATING SERVICE

Effective May 13, 1921.

Sec. 10 (b) Chapter 52, Session Laws, 1913, provides:

"The Commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of products or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product or service and the measurement thereof."

Pursuant to the above statute and having considered the merits or demerits of certain tentative rules provided by the Commission.

IT IS ORDERED That the following Rules and Regulations shall be in force and effect, and apply to all utilities rendering heating service by hot water or steam, on and after May 13, 1921.

General.

1. The word "company" as used herein shall be understood to refer to and mean any individual or corporation serving heat to consumers for a cash consideration within the state of Montana, according to the definition of a "Public Utility" in Section 3, Chapter 52, of the Session Laws of 1913.

2. The company's office shall be open daily during business hours for the accomodation of the public, with the exception of Sundays and holidays.

3. The company is required to furnish service only upon written application made on the regular forms.

4. The company shall extend its service pipes, free of cost to the consumers, from main to inside of property line on streets or to inside the building wall on alleys, providing the distance does not exceed sixty feet for one consumer; all additional to be paid for by the consumer. This rule is not retroactive and shall not be interpreted as entitling either company or consumer to make any collection or application for a refund for installations made prior to the date of approval hereof.

5. All radiators, thermostats, valves, piping, and interior fittings and insulation shall be paid for and maintained by the consumer.

6. Each utility shall render continuous heating service to all consumers during the season, and maintain a pressure sufficient to maintain the constant temperature for which the radiation is designed.

7. Each utility may require any or all consumers to make a deposit equal to one and one-half times the estimated average monthly bill, such deposit to bear interest at the rate of 6 per cent per annum, to be credited on the consumer's last monthly bill for each heating season.

8. All bills shall be due when rendered, payable at the company's office. Discounts will apply only as stated on the bill and failure to receive bills will not entitle the consumer to discounts after the date set.

9. No company shall be required to serve a consumer who is in arrears for previous service until such arrears have been fully paid or other satisfactory arrangements made.

10. For any temporary service the consumer shall pay the cost of connecting and disconnecting the service.

11. Any temporary failure on the part of the company to supply service by reason of accidents, strikes, or other causes beyond the control of the company, shall not render the company liable beyond a prorata abatement of service charges during such interruption.

12. The company shall not be liable in any event for any damage caused by any improper apparatus or appliances on the consumer's premises, or any improper construction or the placing thereof, or any improper use or operation of any apparatus or appliances upon the consumer's premises; or for any damages whatsoever to any person or property upon the consumer's premises not caused by the company's negligence.

13. Each utility rendering heating service by means of hot water shall charge for same on the "square-foot-of-radiation-per-person" basis.

14. Each utility selling steam heat shall furnish and install an approved type of condensation meter on each service, free of cost to the consumer, and charge for service on unit of 1000 pounds of condensation.

15. Forty-eight hours' notice (Sundays and holidays added) must be given in writing at the company's office to discontinue service.

16. The company shall have the right to discontinue its service without notice for any of the following reasons: non-payment of bills when due; to prevent fraud and abuse; for the failure of the consumer to comply with the rules and regulations; for extraordinary repairs that are necessary for the protection and continuance of service.

17. No company shall be required to extend its mains to serve an individual or a group of individuals without an order from the Commission in each case; each order to be

preceded by (a) a petition for service on the part of those desiring service; (b) an investigation by the Commission as to probable cost of extension, cost of service, and probable revenues that may be expected. Such orders may or may not require the new consumers to bear a portion of the cost of the extension.

SPECIAL RULES.

Steam-Metered Service.

18. Each consumer shall furnish and keep in repair all piping and heating apparatus on his own premises, so that all water condensation from the premises will return to the meter unrestricted and free from pressure.

19. The consumer shall provide sewer connection and piping from the discharge side of the meter, so that all water condensation after passing through the meter will empty into the sewer or other approved means of disposal.

20. The consumer shall leave no open steam connections on his premises except by written permission of the company.

21. The utility shall not assume the duty of inspecting the consumer's piping system and apparatus and is not responsible therefor. However, the utility, upon request of any consumer, is expected to make inspections and recommendations that may assist in rendering the maximum service in the most efficient and economical manner.

22. In case of failure to obtain a reading of the meter for any month, an estimated bill will be rendered and so marked. In case a meter fails to register correctly, a prorated bill will be rendered.

HOT WATER HEATING.

Flat Rates.

23. The consumer shall not, in any manner, change, divert or use the water circulating through the interior system or permit the same to be changed, diverted or used, and will exercise at all time reasonable care for the protection of the company's property on his premises, and will not install any additional radiation in said premises without the written consent of the company, and will keep all outside openings properly protected or closed so as to exclude outside air in cold weather.

24. The consumer shall, at his own expense, keep in good repair all pipes, pipe coverings and radiators within the premises; all pipe insulation shall conform with the company's standard and all bare or exposed pipes on the

consumer's premises shall be measured and charged for as direct radiation at the regular rates.

25. Collections for heat sold on the flat rate basis shall be made monthly, the percentages for each month of the season to be applied to the season rate to determine the monthly bill.

Heat used prior to September 30	5%
October	10%
November	15%
December	15%
January	20%
February	15%
March	10%
April	5%
After April 30	5%

Note: It is not the intention to work any undue hardship, expense or inconvenience upon any utility or consumer by the immediate application of the above rules. Temporary modifications, exceptions and extensions may be made by the Commission as the facts in each case may warrant. The burden of proof in each case rests with the utility, however; without a claim being made and substantiated by proof, followed by an order from the Commission in each instance, every departure from the rules will be regarded as a violation of the law. A reasonable time will be granted both consumers and utilities to make changes in installation necessary to comply.

RULES *and* REGULATIONS
for
ELECTRIC SERVICE

RULES AND REGULATIONS PRESCRIBING
STANDARDS FOR ELECTRIC SERVICE
PROVIDING FOR THE TESTING OF METERS
AND OTHERWISE REGULATING THE
SERVICE OF ELECTRIC UTILITIES.

Adopted November 19, 1921; Effective December 1, 1921.

FOREWORD.

During the regular session of the legislature in 1913, the Board of Railroad Commissioners was designated, ex-officio, the Public Service Commission, the Act being known as Chapter 52, of the Session Laws of 1913. The Commission was created for the regulation and control of public utilities and given authority to require such utilities to furnish reasonably adequate service, to prohibit unjust and unreasonable charges for service, and to prescribe the manner in which utilities should be regulated and controlled.

Both the direct mandates of the statute and the variations in standards of service in the different cities and towns of Montana make it necessary for this Commission to adopt uniform standards. Rules for electric service were first adopted by the Commission on April 30th, 1914, a set of fourteen general rules which were supplemented from time to time by each utility submitting additional rules to cover the needs of various local situations and conditions. The general rules served their purpose for the time being, but now, after an experience period of over seven years and considering the wide variation in the special rules of the different companies serving 152 Montana cities and towns, and the different standards of service rendered, the Commission is compelled to adopt a standard to apply to all electric utilities. The following Rules and Regulations were adopted after a careful study of the needs and will be found consistent with present day practice and to conform with those of other regulatory bodies where conformity is desirable.

Many of the Montana plants already established a high standard of service and will have to make no change in their present operation to comply. In order to avoid working a hardship on others, we have provided that for sufficient cause shown, such modifications, exemptions and concessions may be made in the rules as the facts in each case may warrant. The burden of proof rests with the utility. Without an express order of the Commission in each instance, every departure from the rules and regulations will be regarded as a violation of the law. A reasonable time will be granted for companies to purchase and install recording instruments, meters and testing equip-

ment required, and to make such other changes as may be necessary.

Rule 1. Authorization of Rules.

(a) The Public Service Law of the State of Montana provides that the Public Service Commission shall be empowered to fix rules and establish standards for service as follows:

Sec. (b) Chapter 52, Session Laws, 1913, provides:

"The Commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of products or service rendered by any public utility and prescribe reasonable regulations for examination and testing of such product of service and for the measurement thereof."

In accordance with the above provisions the Public Service Commission has adopted the following rules and fixed the standard for electric service, effective the 1st day of December, 1921. All provisions, rules or standards conflicting with those contained herein are hereby superseded.

(b) The adoption of these rules shall in no way preclude the Public Service Commission from altering or amending them in whole or in part or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion, or upon the application of any utility. Furthermore, these rules shall not in any way relieve any utility from any of its duties under the laws of this State.

Rule 2. Application of Rules.

(a) These rules shall apply to any person, firm or corporation which is now or may hereafter become engaged as a public utility in the business of selling electric current to domestic, commercial or industrial consumers within the State of Montana.

(b) The rules are intended to define good practice which can normally be expected. They are intended to insure adequate service and prevent unfair charges to the public, and to protect the utilities from unreasonable demands. The co-operation of the utilities with the Commission is presupposed.

(c) In any case where compliance with any of these rules introduces unusual difficulty, such rule may be temporarily waived by the Commission upon application of the utility. If in such case compliance with the rule would cost more than the results of such compliance are worth

to the public and electric consumers it may be permanently set aside by the Commission.

Rule 3. Definition.

In the interpretation of these rules the word "commission" shall be taken to mean the Public Service Commission of Montana; the word "utility" shall be taken to mean any corporation, both public and private, company, individual, association of individuals, their lessors, trustees, or receivers appointed by any court whatsoever, engaged in the business of supplying energy in the form of electric current to domestic, commercial or industrial users within this State; and the word "consumer" shall be taken to mean any person, firm, corporation, municipality, or other political subdivision of the State supplied by any such utility.

OPERATION.

Rule 4. Standard Frequency.

(a) Each utility supplying alternating current shall adopt a standard frequency, the suitability of which may be determined by the Commission, and shall maintain this frequency within five per cent (5 per cent), plus or minus, of standard at all times, during which service is supplied: **Provided, however,** that momentary variations of frequency of more than five per cent (5 per cent), which are clearly due to no lack of proper equipment or reasonable care on the part of the utility, shall not be considered a violation of this rule.

(b) If a utility shall change its standard of frequency, it shall give reasonable notice to all its consumers, and shall make tests and readjust all watt-hour meters as soon thereafter as practicable, and shall refund to the consumers all the excess charges which may have been collected from him by reason of the change of frequency.

Rule 5. Voltage.

(a) Each utility shall adopt a standard average voltage or standard average voltages, as may be required by its distribution system for its entire constant voltage service, or for each of the several districts into which the systems may be divided, and shall file with the Commission a statement as to the standard average voltages adopted. The voltage maintained at any consumers cut-out shall be reasonably constant, as follows:

(1) For service rendered under lighting contract or primarily for lighting purposes, between sunset and 11 o'clock p. m., the voltage shall be within 6 per cent plus or minus of the standard adopted, and the total variation of voltage from minimum to maximum shall not exceed

seven per cent (7 per cent) of the average voltage in cities and towns having a population of 2,500 or more, nor eight per cent (8 per cent) of the average voltage in all other places.

(2) For service rendered primarily for power purposes the voltage variation shall not exceed ten per cent (10 per cent) above or below the standard voltage at any time when the service is required.

(3) A greater variation of voltage than specified above may be allowed when service is supplied directly from a transmission line, or in a limited or extended area where consumers are widely scattered and the business done does not justify close voltage regulations.

(b) Variations in voltage in excess of those specified, caused:

- (1) By the large starting current requirement of power apparatus on consumers premises.
- (2) By the action of the elements.
- (3) Infrequent and unavoidable fluctuations of short duration due to station operation, shall not be considered a violation of this rule.

Rule 6. Voltage Records.

Each utility shall provide itself with one or more portable indicating voltmeters, and each utility serving more than 250 consumers shall have one or more portable graphic recording voltmeters, these instruments to be of an approved type, having a range conforming to the voltage supplied. Each utility shall make a sufficient number of voltage surveys to indicate the service furnished from each transformer and feeder and to satisfy the commission of its compliance with the voltage requirements; utilities serving more than 250 consumers shall keep at least one graphic voltmeter in continuous service at the plant, office or some consumers premises.

Rule 7. Interruptions of Service.

(a) Each utility shall make all reasonable efforts to eliminate interruptions of service, and when such interruptions occur shall reestablish service with the shortest possible delay. Whenever the service is interrupted for the purpose of working on the distribution system or station equipment, this shall be done at a time which will cause the least inconvenience to consumers, and those most seriously affected by such interruption shall, if possible be notified in advance.

(b) Any temporary failure of the utility to supply service by reason of accidents or otherwise, shall not render

the utility liable beyond a pro-rata abatement of service charges during the interruption, provided that such pro-rata abatement shall not be made unless it shall amount to at least 1 per cent of the service charge.

PUBLIC RELATIONS.

Rule 8. Rate Schedule, Rules and Regulations.

(a) Copies of all schedules of rates for service, forms of contract, rules and regulations covering the relations of consumer and utility shall be filed by each utility in the office of the Commission. Complete schedules, contract forms rules and regulations, etc., as filed with the Commission shall also be on file in the local office of the utility, and shall be open to the inspection of the public.

(b) It is recommended that extra copies of rules and regulations for electric service as published and furnished by the Public Service Commission be kept on hand in the office of each utility, and handed to consumers upon request.

Rule 9. Free Service.

No utility will be permitted to render free service or reduced rates other than provided for in the approved tariffs on file with the Commission.

Rule 10. Unit of Measurement.

(a) The unit of measurement for the purchase and sale of electrical energy shall be the kilowatt-hour. All electricity shall be sold within the State of Montana as measured by an approved type of watt-hour meter installed on the consumers premises, except as follows:

- (1) Meters will not be required for windows, outside decorative lighting, street lighting or other constant loads at uniform hours where the consumption may be accurately computed without the use of measuring devices.
- (2) Meters will not be required where electrical energy is sold under contract on maximum demand or some basis other than the kilowatt-hour, provided such contracts are approved by the Commission.
- (3) In case of current bought wholesale the meter may be installed at any point agreed upon by the parties interested.

(b) The utility will not be required to install a meter when not more than 120 watts are connected or on other services where in the utility's judgment the consumption will

not exceed the minimum. All unmetered services shall be billed at the minimum.

(c) If more than one meter is installed except where service conditions on a consumers single premises make the installation of more than one meter necessary, each meter shall be considered by itself in calculating the amount of the bill. When more than one meter is installed under the exception noted above, the readings shall be added, and the bill computed as though the service were rendered through a single meter.

(d) All meters will be sealed by the utility. The breaking of seals by unauthorized persons, tampering with wires, meters or cutouts is prohibited by law.

Section 8659, Penal Code, provides:

"Every person who, with intent to injure or defraud, procures, makes, or causes to be made, any pipe, tube, wire, or other conductor of gas or electricity, and connects the same, or causes it to be connected, with any main, service pipe, or other pipe for conducting or supplying illuminating gas or any wires or other conductor of electricity, in such manner as to supply illuminating gas or electricity to any lamp, motor, burner, or orifice, by or at which illuminating gas or electricity is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person, who, with like intent, injures or alters any gas or electric meter, or obstructs its action, is guilty of a misdemeanor. In prosecution for offenses under this Section, proof that, any of the acts herein forbidden have been done in, upon, or about the premises owned or used by the defendant charged with the commission of such offense in such a manner as to decrease or lessen the amount he should pay under his understanding or contract with any person or corporation engaged in the business of furnishing and selling gas or electricity, shall be prima facie evidence of the guilt of said defendant. (Act approved March 6th, 1897) (5th Sess. 248.)

(a) To receive service a consumer will be required to submit a written application on one of the utility's regular forms.

(b) Charges for service will begin when the connection is made.

(c) Twenty-four hours notice (Sunday and holidays not included) must be given in writing at the office of the utility to discontinue service.

(d) The consumer shall provide a suitable location for the meter as defined in these rules.

(e) Plans for special installations and installations of more than ten kilowatt capacity, must be submitted to the utility for approval before work is commenced.

(f) A separate circuit and meter may be required by the utility for motors of larger capacity than one-third horse power.

(g) The minimum charge will be waived for general lighting, cooking and appliance service for periods of from one to three months during non-occupancy, providing the building is unoccupied or no energy is used during the period. In order to obtain this waiver, the consumer must serve notice in writing at the utility's office at least three days prior to such non-occupancy and immediately before reoccupancy so that the meter readings may be verified. The company may disconnect the service and remove the meter during such vacation period.

(h) Some utilities offer different kinds of service in different localities; to protect consumers against the purchase of improper appliances, they are advised to ascertain from the utility the kind of service supplied in the respective localities, as the utility will not be held responsible for or required to render service to any appliance not suited to the kind of service available. Any change in or addition to the character of service required by a consumer will be made only under contract providing terms approved by the Commission.

Rule 12. Rates for General Service.

(a) All lighting, heating and metered service rates other than power, shall provide for:

(1) A minimum bill, designed to partially or entirely compensate the utility for the fixed charge, cost of meter reading, billing and collecting.

(2) An "energy charge" to cover the operating costs of generating, transmitting and distributing the electric current, including a fair return upon the utility's investment.

(b) When the charge for energy is less than the minimum, the consumer shall be billed at the minimum.

(c) Schedules for general service shall provide for a discount on bills paid within ten days from date of bill.

(d) All bills are due when rendered; failure to receive bills will not entitle the consumer to the discount after the expiration of the ten day limit.

(e) In case of failure to obtain a reading of the meter in any meter reading period, an estimated bill may be ren-

dered and so marked. A correction shall be made on the bill for the following month when the actual reading is available.

Rule 13. Rates for Power Service.*

(a) Rates for Industrial Power shall consist of two parts:

- (1) A "connected-load" charge to cover the fixed charges.
- (2) An "energy-charge" to cover the operating costs of generating, transmitting and distributing the electric current.

(b) The consumers bill for power in any one month shall be computed by adding the charge for energy to the connected load charge. During months where no current is consumed, the net bill shall be the connected load charge.

(c) In cases where the connected horse power of individual motors is materially larger than the maximum demand, the charge may be based on a smaller number of horse-power corresponding with the actual maximum demand, providing that the maximum demand on which the fixed charge is based is not less than 50 per cent of the installed capacity.

(d) Where the installation consists of several motors and the load is of such a character that the maximum demand bears no definite relation to the connected load, a curve drawing or indicating watt-meter shall be installed and the "connected-load" charge based upon the actual maximum fifteen minute demand registered each month.

(e) Lighting necessary in connection with industrial power may be connected to the extent of three per cent of the connected power load when the maximum fifteen minute demand in any one month is in excess of 25 horse power.

*Note: Rule 13 shall not apply where power is sold wholesale under contract on maximum demand, or any basis other than the kilowatt hour rate provided such contracts conform with schedules that have been approved by the Commission.

(f) Electric energy may be sold to large consumers, either industrial or municipal on a flat rate basis, provided that the same charge is made to all consumers receiving the same amount of power under similar conditions; all flat rate contracts must be submitted to and approved by the Commission before being placed in effect.

(g) In temporary connections for power, the consumer will be charged for the entire cost of connecting and disconnecting service. The connected load charge shall be

\$3.00 per horse-power per month, or fraction thereof, and the energy charge the same as prescribed in the utility's power schedule.

(h) Service to X-ray machines will be furnished under the Power Schedule, and the demand charge based on 50 per cent of the transformer rating recommended by the manufacturer of the X-ray machine.

Rule 14 Heating and Appliances.

(a) In order to take advantage of special reduced rates for heating, cooking and appliances, the consumers premises must be so wired that all current will pass through a separate meter to be installed by the utility. Consumers will be required to pay a minimum on each meter according to the utility's schedule.

(b) Each utility offering a schedule of rates for heating, cooking and appliance service, will provide adequate capacity for any consumer within the area which it serves, desiring to take advantage of the schedule, providing the appliances installed conform with the service the utility is equipped to render. The utility will provide adequate transformer capacity to meet the demand, and stand the expense of the service to a point up to and including the meter. In cases where the service is demanded by a tenant, and the owner of the property will accept no responsibility for the permanency of the service, the utility may require the tenant to make a deposit equal to one half the cost of the service, (not including transformer, but including the labor cost of hanging same). When such deposit has been made, the utility will thereafter credit the consumer an amount equal to 25 per cent of his net bill for the heating, cooking or appliance service, until the full amount has been repaid, provided that there shall be no credit during months when the consumption is below the minimum.

(c) Utilities may offer a rate designed for joint residence lighting and heating, under special rules and regulations designed to apply to the installation, and conditions of service.

(d) The demand of an installation or system is the load which is drawn from the source of supply at the receiving terminals averaged over a suitable and specified interval of time. Demand may be expressed in kilowatts, kilovolt-amperes, amperes or other standard units.

The maximum demand of an installation or system is the greatest of all the demands which have occurred during a given period. It shall be determined by measurement over a prescribed time interval. After being determined or specified in the contracts, it shall not be decreased except

as specified in the company's rate schedule or contracts. If at any time the measured demand shall be found to be greater than determined or specified, the said greater demand shall be taken as the basis of charge thereafter. Special permission may be given by the company at its option to exceed the demand upon extraordinary occasions for a limited period.

Rule 15. Deposits.

(a) Each utility may require from any consumer or prospective consumer a deposit intended to guarantee payment of bills. Such deposit shall not exceed the amount of an estimated forty-five days bill of such consumer. Interest shall be paid by the utility upon such deposits at the rate of six per cent per annum, payable annually, for the time such deposit was held by the utility, provided such period was not less than six months.

(b) Each utility receiving deposits from consumers shall keep a Consumers Deposit Book showing: (1) The name of each consumer making a deposit, (2) the premises occupied by the consumer, (3) the amount and date the deposit was made, and (4) a record of each transaction concerning the deposit such as payment of interest and interest credited.

(c) Each utility shall issue to every consumer from whom a deposit is received a non-assignable receipt.

(d) Each utility shall provide reasonable ways and means whereby a depositor who makes application for the return of his deposit or any balance to which he is entitled, but is unable to produce the original receipt, may not be deprived of his deposit or balance.

Rule 16. Bills.

Bills shall be rendered at regular intervals to consumers for metered service and shall show the readings of the meter at the beginning and end of the period for which the bill is rendered, the number and kinds of units of service supplied, the dates of the meter readings and the price per unit of service. On all bills which are computed on any other basis than a definite charge per unit of service, the other factors used in computing the bill shall be clearly stated so that the amount may be readily calculated from the information appearing on the bill.

Rule 17. Discontinuance of Service for Violation of Rules, or Non-Payment of Bill.

(a) No utility shall discontinue service to any consumer for violation of the rules or regulations, or for non-payment of bills, without first having diligently tried to

induce the consumer to comply with its rules and regulations or to pay his bills. Service shall actually be discontinued only after at least twenty-four hours written notice of such intention shall have been given the consumer by the utility. Provided, however, that where fraudulent use of current is detected, or where a dangerous condition is found to exist on a consumers premises, the service may be discontinued without advance notice.

(b) Whenever service is discontinued for violation of rules, regulations, non-payment of bill, or fraudulent use of current, service shall not be resumed until a settlement has been made between the consumer and the utility. In addition to such settlement, the utility may charge the consumer \$1.00 for the cost of making re-connection.

Rule 18. Replacement of Meter.

(a) Whenever a consumer requests the replacement of the service meter on his premises, such request shall be treated as a request for a test of such meter, and as such shall fall under the provisions of Rule 25.

(b) Whenever a consumer moves from the location where he is receiving service and thereby requires the disconnecting and connecting at a new location, and the same work has been done for him within one year preceding, the utility may make a charge for the work based on actual cost.

(c) For any temporary service the consumer must pay the cost of connecting and disconnecting the service.

(d) Consumers must notify the utility of any additions or alterations made to their wiring.

METERS AND METER TESTING.

Rule 19. Meter Rental.

All meters and necessary connections shall be furnished and installed by, and remain the property of the utility. No rental shall be charged for meters or other registering devices installed to measure the service rendered consumers.

Rule 20. Meter Dials.

Each service meter shall be suited to the particular installation to which it is assigned and chosen with a view of obtaining the best adaptation to local conditions and to the load. Each meter shall indicate clearly the unit of service for which charge is made to the consumer. The meter constant, if other than unity, shall be clearly marked on an exposed part of the meter.

Rule 21. Location of Meters.

(a) It is recommended that all meters hereafter installed on consumers premises shall be located in the cellar or first floor, or as near as possible to the service in a clean, dry safe place, not subject to great variations in temperature, and on a support free from vibration. Where it is convenient to install meters out of doors, they should be protected from the weather.

(b) Meters shall not hereafter be placed in coal or wood bins or on the partition forming such bins nor on any unstable partition or supports. Meters installed hereafter must be located at not less than four nor more than seven feet above the floor and unless unavoidable, shall not be installed in attics, dark closets, bathrooms, bedrooms, over stoves, sinks or other plumbing fixtures, or in any location where the visits of the meter reader or tester will cause annoyance to the consumer or utility.

(c) In store buildings meters must not hereafter be located where they may be covered with merchandise, or where shelving will not permit the ready removal of the meter cover.

(d) Meters must be located in places accessible at all reasonable hours for reading, testing and making of necessary repairs and adjustments. In office buildings, flats or apartment houses, meters must not be located in the individual offices, flats or apartments, but should be grouped in meter cabinets in hallways, basements or on outside of buildings. When a number of meters are placed on the same board, a minimum spacing of 15 inches in any direction between centers of meters should be provided, and each meter loop shall be tagged or marked so as to indicate the circuit metered. Where meters are grouped, the main line fuse and switch box, if one is required, and the individual meters must be joined by continuous conduit, and one or more fuse blocks, depending upon the capacity of the installation, must be installed between the meter and the consumer's load.

(e) In restaurant kitchens, mills and foundries, a box or cabinet must be provided by the consumer to completely enclose the meter. A utility may furnish and install a meter connection box on any service.

(f) The installation of meters and connections shall be strictly in accordance with the rules of the National Electrical Code, and the utility rendering the service.

(g) Final connection with the meter shall in all cases be made by the utility and shall not be altered or tampered with except by representatives of the utility.

Rule 22. Error.

(a) No watt-hour meter shall be placed or retained in service which is in any way mechanically defective or which has incorrect constants or which has not been tested for accuracy of measurement, and adjusted if necessary, to meet these requirements:

Average error not over 2 per cent plus or minus.

Error at heavy load not over 1 per cent plus or minus.

Error at light load not over 4 per cent plus or minus.

(b) The average error of a service meter shall be determined as follows: The error at light load, here defined as approximately 10 per cent of the rated capacity—shall be determined by taking the average of at least two errors, determined from as many separate tests on the same light load, which errors must agree within one-half of one per cent. The error at heavy load shall be determined in the same manner, heavy load being here defined as a load of approximately 75 per cent of the rated capacity of the meter. The average error of the meter shall then be determined by taking an average of the error at light load and the error at heavy load, proper account being taken of the sign of the two errors; Provided that where the consumers connected load does not equal seventy-five per cent (75 per cent) of the rated capacity of the meter, the full connected load may be considered as heavy load for the purpose of the test.

(c) Each watt-hour meter shall be checked by the utility for correct connection, proper mechanical condition, accuracy of measurement immediately before installation or within sixty days thereafter.

(d) Meters operating on inductive circuits shall be tested on the connected load under conditions approximating as near as may be, to heavy and light loads, and shall be adjusted if necessary so that the average error will not be more than two per cent (2 per cent).

Rule 23. Periodic Tests.

Each watt-hour meter shall be tested according to the following schedule while connected in its permanent position in place of service.

(a) Two and three wire commutating type up to and including twenty-five (25) amperes rated capacity of meter element shall be tested at least once every twenty-four (24) months.

(b) Two and three wire commutating type meters of over twenty-five (25) amperes rated capacity of meter ele-

ment, shall be tested at least once every eighteen(18) months.

(c) Two and three wire single phase induction type meters, up to and including twenty-five (25) amperes rated capacity of meter elements shall be tested at least once every thirty-six (36) months.

(d) Two and three wire single phase induction type meters of over twenty-five (25) amperes rated capacity of meter element, shall be tested at least once every twenty-four (24) months.

(e) Self Contained polyphase meters, up to and including fifty (50) K. W. rated capacity shall be tested at least once every eighteen (18) months.

(f) Self-contained polyphase meters of over fifty (50) K. W. rated capacity shall be tested at least once every twelve (12) months.

(g) Polyphase meters, connected through current transformers or current and potential transformers, shall be tested at least once every twenty-four (24) months.

Rule 24. Meter Accuracy.

(a) A watt-hour meter in service having an average error of not more than four per cent (4 per cent) plus or minus, may be considered as correct and no adjustment of charge shall be required by such error, but the meter shall be adjusted in accordance with rule 22-a.

(b) No watt-hour meter which registers on "no load" when the applied voltage is less than one hundred and ten per cent (110 per cent) of standard service voltage shall be allowed to remain in service.

Rule 25. Application for tests.

(a) Each utility supplying electrical energy shall make a test of the accuracy of registration of a meter upon request of a consumer, provided such consumer does not make a request for a test of the same meter oftener than once in twelve months. A report giving the result of such test shall be made to the consumer.

(b) If a consumer is dissatisfied with a test made by the utility, and makes a written application to the Public Service Commission, a test will be made by the Commission as soon as practicable after receipt of the application. For such test a fee of two dollars (\$2.00) shall be paid by the consumer at the time of his request; if the meter is found to be fast beyond the allowable limit, the fee will be refunded to the complainant and the amount collected from the utility. If the meter is found to be slow or correct within the allowable limit, the fee paid by the consumer will be retained by the Commission.

Rule 26. Adjustment of Bills for Error.

If, on test of any service meter, either by the utility or the commission, such meter shall be found to have a percentage of error greater than that provided for in these rules, the following provisions for the adjustment of bills shall be observed.

(a) When a meter is found to have a positive error—i. e. is fast in excess of four per cent, the utility shall refund the consumer an amount equal to the excess charged for the kilowatt hours incorrectly metered, for a period equal to one-half of the time elapsed since the last previous test, but not to exceed six months. No part of a minimum service or demand charge need be refunded.

(b) When a meter is found to have a negative average error—i. e., is slow in excess of four per cent, the utility may make a charge to the consumer for the kilowatt hours incorrectly metered for a period equal to one-half of the time elapsed since the last previous test, but not to exceed six months. If a meter is found not to register for any period, the utility shall estimate the charge by averaging the amounts registered over similar periods, preceding or subsequent thereto, or over corresponding periods in previous years. Such action shall be taken only in cases of substantial importance where the utility is not at fault for allowing the incorrect meter to remain in service.

Rule 27. Meter Testing Equipments.**(a) Standardizing Laboratory and Equipment.**

Each utility furnishing metered electric service to more than 250 consumers, unless specifically excused by the Commission, shall establish and maintain a standardizing laboratory equipped with standard meters, instruments and such facilities as may be necessary to make the tests required by these rules. Such equipment and facilities shall be acceptable to the Commission and shall be available at all reasonable hours for the inspection of any authorized representative of the Commission.

(b) Each utility furnishing metered electric service to more than 30 consumers shall provide for and have available such portable indicating electrical testing instruments for testing service watt-hour meters, voltmeters and other electrical instruments in use as may be deemed necessary and satisfactory by the Commission.

(c) Reference standards.

For testing the accuracy of portable watt-hour meters, commonly called rotating standards, and other portable instruments used for testing service meters, each utility, not specifically excused by the Commission shall provide for

and have available as reference or check standards suitable indicating electrical instruments and watt-hour meters, hereafter called "reference standards." Such standards may be of the service type of watt-hour meters, but if so, such meters shall be permanently mounted in the utility's laboratory or office and be used for no other purpose than for checking working standards.

Reference standards of all kinds should be tested, and if necessary adjusted, and certified in some approved laboratory at least once each year.

(d) Rotating standards shall be compared with the reference standards at least once a week for commutator types and once in two weeks for induction types during the time such portable testing standards are being regularly used. Unless accompanied by a calibration card, if such check shows any portable rotating standard to be in error more than one per cent plus or minus at any load at which the standard will be used, the meter shall be tested, adjusted and certified in the laboratory of the utility or, in some other approved laboratory. Each portable rotating standard shall at all times be accompanied by a certificate or calibration card, signed by the proper authority, giving the date when it was last certified or adjusted. Records of certification and calibration shall be kept on file in the office of the utility.

(e) All portable indicating electrical testing instruments, such as voltmeter, ammeters, when in regular use for testing purposes, shall be checked against suitable reference standards at least once a week when continually in use, and if found appreciably in error at zero or more than one per cent of full scale value at commonly used scale deflection shall, unless accompanied by a calibration card, be adjusted and certified in some approved laboratory.

Rule 28. Meter Records.

(a) A complete record shall be kept of all tests and inspections made under these rules as to the quality or condition of service.

(b) Whenever any meter in service is tested, a record shall be preserved containing the information necessary for identifying the meter, the reason for making the tests, the reading of the meter both before and after the test, the result thereof together with all data taken during the test in sufficiently complete form to permit the convenient checking of the methods employed.

(c) A record shall also be kept, numerically arranged, giving for each meter owned or used by any utility the date of purchase, its identification number and tests to which

it has been subjected, with dates and general results of all tests. This record to apply to all meters purchased after the effective date of these rules and to all other meters in so far as the information is available.

(d) Annual tabulations of the results of all meter tests shall be made and arranged according to types of meters and intervals of tests.

Rule 29. Complaints.

Each utility shall keep a record of complaints made to it by its consumers in a suitable book or file retained for that purpose; the record shall show the name and address of the complainant, the date and character of the complaint and the adjustment or disposal made thereof.

Rule 30.

Each utility shall, at such times and in such manner as the Commission may prescribe, report to the Commission the results of any test or tests required to be made or the information contained in any records required to be kept by the utility.

Rule 31. Station Records.

(a) Each utility shall install such curve drawing watt meters, indicating instruments, or watt-hour meters as may be necessary to obtain a daily record of the load and a monthly record of the output of its plant. Each utility purchasing electrical energy shall install such instruments or watt-hour meters as may be necessary to furnish full information as to the monthly purchase.

(b) Each utility shall keep a station record or log book which shall show: the time of starting and shutting down each generating unit; the time of starting and disconnecting all street lighting circuits; the reading of instruments at each generating station at such intervals as are necessary to determine the character of the load; all interruptions to service affecting the bus bars or distribution system, with the time, duration, extent and the cause of the interruption. An interruption is here defined for the purpose of the record only, as the interval of time during which the voltage falls below fifty per cent (50 per cent) of the standard voltage.

"The log book or record shall be signed by the person in charge, before being relieved. He shall keep within sight an operating diagram or equivalent device indicating whether electrical supply circuits are open or closed, and where work is being performed. On circuits carrying normally in excess of seventy-five hundred (7500) volts the operator in charge shall place "men at work" tags upon switches con-

trolling any circuits upon which men are known to be working and it shall be his duty to enforce the safety rules and permit only authorized persons to approach the equipment or lines." Section 27 Chap. 171, Acts of Fifteenth Legislative Assembly.

EXTENSION OF LINE.

Rule 32. Extensions.

(a) Each utility shall, upon written request for service by a prospective consumer or a group of prospective consumers located in the same neighborhood, make free of charge a line extension of 300 feet for each prospective service, that is to say, if there are three prospective consumers, the extension shall be 900 feet. The service from the pole to the consumer's building will be considered as a portion of the 300 foot free limit.

(b) Extensions for power will be made on the basis of 100 feet for each horse power connected.

(c) Utilities will not be required to make power extensions as described in this rule unless those to be served by such extensions shall agree to use the service for at least three years. The utility may require of each prospective consumer on a proposed extension a satisfactory and reasonable guarantee that he will fulfill all of the obligations made by him to the utility.

(d) If the line extension required in order to furnish service at any point within the corporate limits of a municipality or for any adjacent suburb of a municipality is greater than the free extension specified above, such an extension shall be made under the following conditions: The utility may require a deposit from the prospective consumer or consumers equal to the cost of the extension above the free limit, and shall refund to each consumer monthly thereafter 25 per cent of his net service bill until the full amount has been repaid. The utility shall further refund pro rata an amount equal to the cost of the free line extension for each additional consumer whose service shall be connected within a period of six years from the making of an extension under this rule, but at no time shall the aggregate rebates exceed the original deposit.

(e) If any extension petitioned for is of such length, and the prospective business which may be developed by it is so meager as to make it doubtful whether the business would ever pay a fair return on the investment involved in such extension or in the case of real estate development enterprises with slight or no immediate demand for service, or in the case of an industrial installation requiring extensive equipment with slight or irregular service, the

facts shall be submitted to the Commission for investigation and determination as to the reasonableness of such extension or installation and the conditions under which it shall be made.

(f) Safety in construction and maintenance is essential. Divided interest and responsibility are not good public policy and the construction of electric lines by inexperienced persons is discouraged. To the end that safety and uniformity may be obtained, all extensions will be built according to the specifications of the utility conforming to its standard practice on similar lines. The utility will be responsible for maintenance, and will have complete ownership when the consumers deposits have been repaid.

(g) This rule shall not be construed as prohibiting any utility from making free extensions of lengths greater than above specified, or from providing a method of return more favorable to consumers, so long as no discrimination is practiced between consumers whose service requirements are similar.

Rule 33. Extension of Lines for Rural Service.

(a) A rural consumer is one whose premises are outside of the corporate limits of a municipality and one requiring an investment per consumers unit demand greater than is ordinarily required for consumers within municipalities.

(b) Rural consumers may arrange for electric service provided they will compensate the utility for the fixed and operating costs of the service.

(c) Rates must not be discriminatory and because a greater investment is required per rural consumer's unit demand and greater line loss is suffered in distribution than with municipal consumers, the rates for rural service as a rule will be higher than for similar service in municipal areas. The minimum charge will also be higher because of the greater expense in meter reading and investment in consumers service.

RULES *and* REGULATIONS
for
PETROLEUM PIPE LINE SERVICE

PIPE LINE RULES *and* REGULATIONS

Effective, October 1, 1921.

Pursuant to the provisions and requirements of Chapter 8, of the Acts of the Extraordinary Session of the Seventeenth Legislative Assembly, entitled: "An Act Defining and Regulating Common Carrier Pipe Lines and Granting to them the Right of Eminent Domain; Empowering the Board of Railroad Commissioners of Montana to Regulate the Rates, Charges and Business of Such Common Carrier Pipe Lines; Prohibiting Discrimination by Said Pipe Lines and Providing Penalties for the Violation of This Act," and in pursuance further of the public hearing held in Lewistown, Montana on April 15th 1921, and rehearing in Lewistown, Montana on June 30, 1921, it is hereby ordered that every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever, owning, operating or managing any pipe line, or any part of any pipe line, for the gathering, receiving, loading, transporting, storing and delivering of crude petroleum, within the state of Montana, as a common carrier as defined in Section One (1) of Chapter 8, hereinbefore referred to, shall be subject to and governed by the following rules and regulations until the same are hereafter modified or changed by other and future general orders of this Board, or special order applicable only to particular oil fields:

For the sake of convenience and brevity, in these rules and regulations, the word "Commission" as used herein shall be understood to refer to and mean the Board of Railroad Commissioners of the State of Montana, the common carriers herein specified shall be referred to as "pipe-lines," and the owners or shippers of crude petroleum, by pipe lines shall be referred to as "shippers."

Rule 1. **"Barrel" Defined.** For the purpose of these rules and regulations, a "barrel" of crude petroleum is declared to be forty-two (42) gallons, United States measurement, at a temperature of sixty (60) degrees Fahrenheit.

Rule 2. **All Marketable Oil to Be Received for Transportation.** By the term "marketable oil" is meant any crude petroleum adapted for refining or fuel purposes, properly settled and containing not more than two (2) per cent of basic sediment, water or other impurities above a point six (6) inches below the pipe line connection with the tank. Pipe lines shall receive for transportation all such "marketable oil" tendered, meeting the minimum requirements defined in Rule 7, provided, first no pipe line shall be required to receive for shipment from any person, firm, corporation or association of persons, exceeding 3,000 barrels of petro-

leum in any one day; and, provided, second, if the oil tendered for transportation differs materially in character from that usually produced in the field and being transported therefrom by the pipe line, then it shall be transported under such terms as the shipper and pipe line may agree or the Commission may require.

Rule 3. Basic Sediment. How Determined-Temperature. In determining the amount of sediment, water or other impurities, the pipe lines are authorized to make a test of the oil tendered for transportation from an average sample from each tank of the oil tendered, by the use of any standard method for making such tests agreed upon by the pipe line and the shipper. The same method of ascertaining the amount of the sediment, water or other impurities shall be used in the delivery as in the receipt of oil. Consignee shall have the same right to test the oil upon delivery at destination that the pipe line has to test before receiving from the shipper.

Rule 4. Gauge Tables. Each pipe line company transporting crude petroleum shall cause to be strapped and gauged all field tanks of producing companies from which such pipe line company receives crude oil, either by purchase or for transportation, and shall furnish to any parties interested as producers, shippers, or purchasers, a true copy of such gauge tables.

Rule 5. Storage. Pipe lines shall provide, without additional charge, sufficient storage, such as is incidental and necessary to the transportation of oil, including storage at destination or so near thereto as to be available for prompt delivery to destination point, for five (5) days from the date of offer of delivery at destination.

Rule 6. Identity of Oil, Maintenance of. Pipe lines, at their election, shall deliver to consignee, either the identical oil received for transportation, subject to such consequences of mixing with other oil as are incident to the usual pipe line transportation, or they may make delivery from their common stock at destination; provided, if this last be done the delivery shall be of substantially like kind and market value.

Rule 7. Minimum Quantity to Be Received. Pipe lines shall not be required to receive less than one (1) tank car-load of oil when oil is tendered for loading into tank cars at pipe line destination. When oil is tendered for transportation for other than tank car delivery, pipe lines shall not be required to receive less than five hundred (500) barrels.

Rule 8. Gathering Charges. Tariffs hereafter filed by the pipe lines shall specify separately the charges for gather-

ing of the oil, and, for the transportation of same through the trunk line and delivery or loading at the terminal.

Rule 9. Gathering, Testing and Deductions. All oil tendered pipe lines for transportation shall be gauged and tested by a representative of the pipe line prior to its receipt from the shipper; but the shipper shall at all times have the privilege of being present or represented at the gauging and testing. Corrections may be made for temperature, allowing or deducting at the rate of one (1) per cent for every twenty-five (25) degrees in temperature below or above sixty (60) degrees Fahrenheit. Pipe lines may deduct the full per cent of basic sediment, water and other impurities as the centrifugal or other test agreed upon may show, except that no such deductions shall be made when such test shows only one-half of one per cent or less of such basic sediment, water and other impurities. A further deduction of two (2) per cent for evaporation and loss during transportation shall be made and the net balance shall be the quantity deliverable by the pipe line.

Rule 10. Delivery Tenders and Demurrage. Pipe lines shall transport oil with reasonable diligence, considering the quality of the oil, the distance of transportation, and other material elements, but may at any time after receipt of a consignment of oil, upon twenty-four (24) hours notice to the consignee tender oil for delivery from its common stock at the point of destination, conformably to Rule 6, at the rate of not exceeding five thousand (5,000) barrels per day of twenty-four (24) hours. Computation of time of storage (as provided for in Rule 5) shall begin at the time of such notice. At the expiration of the time allowed, in Rule 5, for storage at destination, pipe lines may assess a demurrage charge on all oil tendered for delivery and remaining undelivered at the rate of 1-2c per barrel per day for the first ten days; 1c per barrel per day for the next ten days and thereafter at the rate of 1 and 1-2c per barrel for each day of twenty-four (24) hours or fractional part thereof.

Rule 11. Unpaid Charges, Lien for and Sale to Cover. Pipe lines shall have a lien on all oil to cover charges for transportation, including demurrage, and may withhold delivery of oil until said charges are paid. If such charges shall remain unpaid for more than thirty (30) days after notice of readiness to deliver, the pipe line, by any agent, may sell said oil at public auction at the general office of the pipe line on any day not a legal holiday and not less than five days after publication of notice in a daily newspaper of general circulation published in the county where said pipe-line is located, said notice giving the time and place of the sale and the quantity of the oil to be sold.

From the proceeds of the sale the pipe line may pay itself all charges lawful accruing, including demurrage, and all expenses of said sale, and the net balance, if any, shall be held for whomsoever may be lawfully entitled thereto.

Rule 12. Notice of Claims. Notice of claims for loss, damage or delay in connection with the shipment of oil must be made in writing to the pipe line within ninety (90) days after such shall have occurred, or, in case of failure to make delivery, within ninety (90) days after the acceptance of the oil by the company.

Rule 13. Telegraph or telephone Line. Shipper to Use. Where pipe lines maintain a telegraph or telephone line, shippers may use the same, without extra charge, for messages incident to shipments.

Rule 14. Contracts of Transportation. When a consignment of oil is accepted, pipe lines shall give the shipper a run-ticket, and shall thereafter render to the shipper a statement which shall show the amount of oil received for transportation, the points of origin and destination, corrections made for temperature, deductions made for impurities and the rate for such transportation.

Rule 15. Shippers' Tanks, etc.—Inspection. When a shipment of oil has been tendered for transportation, the pipe line, by its representative, shall have the right to go upon the premises where such oil is produced or stored and have access to any and all tanks or storage receptacles for the purpose of making any examination, inspection or test authorized by these regulations.

Rule 16. Apportionment when Tenders are in Excess of Facilities. When there shall be tendered to any pipe line, for transportation, more oil than can be immediately transported, the transportation furnished by the pipe line shall be apportioned among all shippers in proportion to the amounts tendered by each; provided, no tender for transportation shall be considered beyond the amount which the party requesting the shipment, then has on hand accessible to and ready for shipment by the pipe line. The pipe line shall be considered as a shipper of oil produced or purchased by itself and held for shipment through its lines, and its oil shall be entitled to participate in such apportionments.

Rule 17. Interchange of tonnage. Pipe lines shall provide the necessary connections and facilities for the exchange of tonnage at every locality reached by two or more pipe lines, when the Commission finds that a necessity exists for connection and under such regulations as the Commission may determine in each case.

Rule 18. Receipt and Delivery. Necessary Facilities for. Pipe lines shall install and maintain facilities for the receipt and delivery of marketable crude petroleum of shippers at any point on their lines when the Commission finds that a necessity exists therefor, and under such regulations as the Commission may prescribe.

Rule 19. Fires, Lightning and Leakage. Report of Loss from. All pipe lines shall immediately notify the Commission by telegraph or telephone, (confirmed by letter) of all fires which occur at oil tanks owned or controlled by them, or tanks struck by lightning, and they shall also in like manner report all breaks or leaks in tanks or pipe lines and from which breaks oil is escaping or has escaped in quantities exceeding 50 barrels in any one day.

Rule 20. Monthly Report. Each pipe line company shall file with the Commission at its office in Helena, Montana, monthly reports to be filed not later than the 25th day of the month, following the calendar month for which the report is rendered, verified under oath by the reporting carrier showing the following information.

(a) The total number of receiving stations established by the reporting carrier for the reception and transportation of crude petroleum through its pipe lines, giving the name or number, if any, by which said stations are designated, the field or district where located, and the county or counties served by such receiving stations.

(b) The total number of delivery stations established by the reporting carrier for the delivery of crude petroleum transported through its pipe lines, giving the name or number, if any, by which said delivery stations are designated, and where located.

(c) The total number of barrels of crude petroleum gathered by each receiving station and run into the pipe lines of the reporting carrier.

(d) The total number of barrels of crude petroleum transported through the pipe lines of the reporting carrier, between points within the State, showing separately the number of barrels transported for its own account and the number of barrels transported for others.

(e) The total number of barrels of crude petroleum delivered by the reporting carrier subsequent to transportation by it, showing to whom delivered and at what station delivered.

(f) The total number of barrels of crude petroleum owned and held by the reporting carrier within the state for its own account.

(g) The total number of barrels of crude petroleum held in storage by the reporting carrier for others.

(h) The total amount of unfilled storage held by the reporting carrier.

(i) A statement as to gross revenues and expenses, each and every item thereof being separately set out, and proper monthly allowances made for depreciation, amortization and taxes.

(j) Estimated amount of loss of oil by fire or leakage from tanks and pipe lines for the preceding month, if any.

(k) Loss due to leakage and evaporation incident to storage and transportation.

(l) The average monthly field price of said oil according to grades.

Rule 21. Annual Reports. Each pipe line company shall file with the Commission at its office in Helena, Montana, an annual report for the year ending December 31st, 1921, and for each calendar year thereafter, said report to be filed not later than the 28th day of February next following the year which the report is made. Said report shall show the names of officers, directors, and the residence of each, amount of capital stock and bonded indebtedness outstanding; capital investment with additional investments made during the year; assets and liabilities; revenues and expenditures, depreciation; statistical data as to petroleum, delivered and lost during transportation; also such other information as may be deemed pertinent by the Commission concerning the carriers transactions in the performance of common carrier service.

Said annual report shall be made to the Commission on such forms as may be prescribed and furnished by said Commission for that purpose, and shall be verified under oath by the President or Secretary of the pipe line company.

Rule 22. Printing and posting. Pipe lines shall have copies of these Rules and Regulations attached to their tariff sheets and shall post the same in a prominent place in their various offices for the inspection of the shipping public. They shall post and publish only such Rules and Regulations as are approved by the Commission.

This order shall be in full force and effect on and after October 1st, and shall remain in full force and effect until the further order, general or special, of the Commission.

NOTE: The information required under (f), (g), and (h) shall be furnished as of the last day of the calendar month for which the report is rendered. It is expressly provided by law that no publicity shall be given by the Board of Railroad Commissioners as to the stock of crude petroleum on hand of any particular pipe line.

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